Volume XXV] *December, 1910* [*Number 4*

POLITICAL SCIENCE QUARTERLY

THE LEGISLATIVE POWER OF CONGRESS UNDER THE JUDICIAL ARTICLE OF THE CONSTITUTION

FROM almost the beginning of our history the courts of the United States have recognized that Congress has certain powers of legislation which are to be derived from the third article of the Constitution. This is the article which defines the judicial power of the United States. It does not contain a word about Congress or its powers, but taken in connection with article i, section 8, paragraph 18, which gives to Congress the power to pass all laws necessary and proper for carrying out any power conferred upon the United States or any department or officer thereof, it has been construed as conferring upon Congress the power in certain instances to determine what shall be the law to be applied by the United States courts in the exercise of the judicial power conferred upon them by this judicial article.

It is the purpose of this paper to endeavor to ascertain: (1) from an examination of the reported decisions of the courts, what is the extent of this legislative power; (2) from a consideration of the action of Congress, how far the power has been exercised by that body; and (3) what effects upon our law as a whole would result from an occupation by Congress of the entire field recognized as belonging to it.

I

What is the extent of the legislative power of Congress which may be derived from the judicial article of the Constitution?

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The first intimation by the Supreme Court that Congress possesses any legislative power as a consequence of the provisions of the third article is to be found in United States *v.* Bevans.[1] In this case the question before the court was whether the state court of Massachusetts had jurisdiction of a murder committed on a United States man-of-war lying in Boston harbor, and its decision involved the construction of an act of Congress. Chief Justice Marshall, who delivered the opinion of the court, said, in considering whether jurisdiction had been ceded by Massachusetts to the United States:

> It is contended to have been ceded by that article in the Constitution, which declares that "the judicial power shall extend to all cases of admiralty and maritime jurisdiction." The argument is, that the power thus granted is exclusive; and that the murder committed by the prisoner is a case of admiralty and maritime jurisdiction. Let this be admitted. It proves the power of Congress to legislate in the case; not that Congress has exercised that power.

For a considerable period of our history, however, little if any reliance was placed upon the theory that Congress received from the third article legislative power with regard to anything but the organization, jurisdiction and procedure of the courts, and particularly the inferior courts, of the United States.[2] It

[1] 3 Wheaton, 336.

[2] That Congress had powers of legislation with regard to these matters was, however, recognized very early in our history. Thus in Wayman *v.* Southard, 10 Wheaton, 1, 22, in answering the objection that "the government of the Union cannot, by law, regulate the conduct of its officers in the service of executions on judgments rendered in the federal courts, but that the state legislatures retain complete authority over them," Chief Justice Marshall said: "The court cannot accede to this novel construction. The Constitution concludes its enumeration of granted powers, with a clause authorizing Congress to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this Constitution in the government of the United States or in any department or officer thereof. The judicial department is invested with jurisdiction in certain specified cases, in all of which it has power to render judgment. That a power to make laws for carrying into execution all the judgments which the judicial department has power to pronounce is expressly conferred by this clause seems to be one of those plain propositions which reasoning cannot make plainer. The terms of the clause neither require nor admit of elucidation. The court, therefore, will only say, that no doubt whatever is entertained on the power of Congress over the subject."

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is true that section 34 of the original Judiciary Act, now section 721 of the Revised Statutes, did provide that, except where otherwise provided by the Constitution, treaties and statutes of the United States, the laws of the several states are to be regarded as the rules of decision in trials at common law in the courts of the United States where they apply. This enactment naturally involved a claim upon the part of Congress of a legislative power based upon the third article of the Constitution.[1] The action taken by Congress incidental to the assertion of this claim was, however, so modest that no objection was made to it in any quarter; and from that time to this the courts of the United States have been regarded in the main as tribunals which, free from local prejudice, are called upon to determine those cases and controversies over which they have jurisdiction in accordance with the principles of law in force in the particular states in which they sit. For a long time it was not apparently believed that the third article of the Constitution conferred upon Congress any legislative power with regard to the substantive law to be applied by the federal courts in the exercise of their acknowledged jurisdiction.

In one branch of the law, however, the courts of the United States began at an early time to administer a law which was not to be found in the "laws of the several states." This was the admiralty or maritime law. This exception to the general rule has been based upon two distinct grounds.

In the first place, in that section of the Judiciary Act which is now section 711 of the Revised Statutes, Congress provided that the admiralty and maritime jurisdiction of the United States district courts, then established, should be exclusive,

[1] In a number of cases, the most important of which is Wayman *v.* Southard, 10 Wheaton, 48, it has been said that in the absence of action by Congress the federal courts would have adopted this rule. But this statement does not mean that section 34 of the Judiciary Act was declaratory of any constitutional principle, but rather that the courts of the United States, following the rules which are recognized in cases of conflicts of law (*cf.* Wisconsin *v.* Pelican Insurance Company, 127 U. S. 265), would have applied the local law properly applicable to the contract or other legal relation at issue. The action of courts in such cases, it is to be borne in mind, is based, in the absence of legislative provisions, upon considerations of expediency and of comity rather than upon constitutional or legal obligation.

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"saving to all suitors the right of a common-law remedy, where the common law is competent to give it." This clause has been interpreted as giving to the district courts of the United States exclusive jurisdiction in all cases in which the remedy sought is an action primarily *in rem* against an offending vessel.[1] At first the admiralty jurisdiction of the United States was supposed to extend merely to waters affected by the ebb and flow of the tide.[2] So long as this was the recognized rule, the states endeavored to regulate the legal relations arising in waters not considered to be within the admiralty jurisdiction of the United States by legislation, which provided remedies to be administered by the ordinary state courts similar to if not identical with admiralty remedies. Later in the history of the country the Supreme Court changed its view as to what were navigable waters of the United States. In 1851, in the Gennesee Chief *v.* Fitzhugh,[3] and in 1857, in the Steamboat Magnolia,[4] it laid down the rule that navigable waters subject to the admiralty jurisdiction of the United States are waters actually navigable, upon which commerce with foreign countries or between the several states is carried on.[5] When this determination was reached, it necessarily followed that the state legislation referred to, which provided for the administration by state courts of the principles of admiralty law as to matters arising on state waters, ceased to have any effect, and that the jurisdiction of the admiralty courts was as exclusive over what had been regarded as state waters, but now were regarded as United States waters, as it had been from the beginning over tidal waters.[6] The Supreme Court admitted, indeed, that the reservation in the Judiciary Act touching common-law remedies still permitted the state courts to take jurisdiction of actions in maritime contract and tort, provided the remedy was primarily *in personam* rather than *in rem*.[7] But in what were regarded as admiralty

[1] The Moses Taylor (1866), 4 Wallace, 411.

[2] The Thomas Jefferson (1825), 10 Wheaton, 428.

[3] 12 Howard, 414. [4] 20 Howard, 296.

[5] See Leovy *v.* United States, 177 U. S. 621.

[6] The Hine *v.* Trevor (1866), 4 Wallace, 555. [7] *Ibid.*

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proceedings in the strict sense, *i. e.* in actions *in rem* against vessels, there being no state laws to follow, the courts of the United States had to apply the admiralty or maritime law, which they justly described as a sort of world law, and which they gradually elaborated and developed by their decisions.

In the meantime, however, the Congress of the United States had been passing a whole body of legislation concerning the registry and license of vessels, the inspection of steam vessels, the duties of masters and seamen and the rights and liabilities of shippers and ship-owners. The states also passed many laws on the same subjects; for the states were recognized as having, in the absence of congressional regulation, a concurrent power of legislation as to many parts of the maritime law,[1] and the state courts had jurisdiction of the cases arising under such laws provided the remedy given by them was a common-law remedy.[2]

For a long time, notwithstanding Chief Justice Marshall's suggestion in United States *v.* Bevans,[3] it was believed that the power of Congress to legislate with regard to the maritime law was derived from the power to regulate commerce,[4] which early in our history had been held to include navigation.[5] But when the admiralty jurisdiction was extended over what had previously been regarded as state waters, it was apparently believed by the United States courts that a wider congressional power to regulate the maritime law could be found in the judicial article of the Constitution than in the clause empowering Congress to regulate commerce. In a series of cases, ending with *In re* Garnett,[6] the Supreme Court has adopted unequivocally the view that Congress has a power to fix and determine the maritime law, because the courts of the United States are clothed, under article iii of the Constitution, with the power to decide admiralty cases. It may therefore be said that Congress derives legislative power from that part of the judicial article of the Constitution which provides that the judicial power of the United States shall extend to all cases of admiralty and maritime jurisdiction.

[1] Sherlock *v.* Alling, 93 U. S. 99. [2] *Ibid.*

[3] *Cf. supra*, p. 578. [4] *Cf.* The Lottawanna, 21 Wallace, 558.

[5] Gibbons *v.* Ogden, 9 Wheaton, 1. [6] 141 U. S. 1.

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It is to be remembered, however, that the judicial power of the United States, according to the provisions of the third article of the Constitution, extends to several classes of cases other than cases of admiralty and maritime jurisdiction. The question accordingly presents itself: Does Congress obtain from the judicial article the same power of legislation in these other classes of cases which it is recognized as obtaining in admiralty and maritime cases?

To answer this question we must consider the judicial article in some detail. The cases enumerated fall into two classes. The first class includes all cases in law or equity arising under the Constitution, the laws of the United States and treaties made or to be made under their authority, all cases affecting ambassadors, other public ministers and consuls, and all cases of admiralty and maritime jurisdiction. The second class includes controversies to which the United States shall be a party, controversies between two or more states, between citizens of different states, between a state and citizens of another state, between citizens of the same state claiming lands under grants from different states, and between a state or the citizens thereof and foreign states, citizens or subjects. This clause was limited by the eleventh amendment so as to exclude from the judicial power of the United States "any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state or by citizens or subjects of any foreign state." [1]

These two classes of cases are to be distinguished, because to those enumerated in the first class is prefixed the word "all," and because those in the first class are referred to as "cases" and those in the second as "controversies." The use of the word "all" in the first class of cases and its omission in the second are not, however, considered to be of any special significance. The article is certainly not regarded as conferring upon the United States courts exclusive jurisdiction in the one class of cases and concurrent jurisdiction in the other. The Supreme

[1] This amendment has been interpreted to include suits brought against a state by its own citizens. Hans *v.* Louisiana, 134 U. S. 1.

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Court, on the contrary, has adopted the view that the exclusiveness or concurrency of the jurisdiction of the courts of the United States is dependent upon the action of Congress, which has the right in all cases to make the federal jurisdiction exclusive if it sees fit to do so.[1] The difference between "case" and "controversy," while real and from some points of view important, has little significance for the present investigation. It is to be said, however, that the jurisdiction of the federal courts is wider in "controversies" than in "cases." Thus it has been held that, although these courts have no jurisdiction to probate wills, they have jurisdiction to hear and determine controversies between citizens of different states the purpose of which is to annul a will already probated.[2]

It is further to be noticed, as Chief Justice Marshall pointed out in Cohens *v.* Virginia,[3] that the cases in which jurisdiction is given to the courts of the Union may be grouped in two classes from another point of view:

> In the first, their jurisdiction depends on the character of the cause whoever may be the parties. This class comprehends "all cases in law and equity arising under this Constitution, the laws of the United States, and treaties made, or which shall be made, under their authority." [Cases of admiralty and maritime jurisdiction are to be included in this class.] . . . In the second class, the jurisdiction depends entirely on the character of the parties. In this are comprehended "controversies between two or more states," "between a state and citizens of another state" and "between a state . . . and foreign states, citizens or subjects." [Controversies between citizens of different states and between citizens and aliens are of this class.] If these be the parties, it is unimportant what may be the subject of the controversy. Be it what it may, these parties have the constitutional right to come into the courts of the Union.

It may perhaps be urged that in the first class of cases, *i. e.*

[1] Thus in The Moses Taylor, 4 Wallace, 428, the court says: "The Judiciary Act of 1789, in its distribution of jurisdiction to the several federal courts, recognizes and is framed upon the theory that in all cases to which the judicial power of the United States extends, Congress may rightfully vest exclusive jurisdiction in the federal courts."

[2] *Infra*, pp. 601 *et seq.*

[3] 6 Wheaton, 264.

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those in which the federal courts have jurisdiction on account of the subject matter, the United States has greater independence in determining what law shall be applied than it has in the second, in which jurisdiction is obtained by reason of the character of the parties; and it is true that the instances in which Congress has endeavored to fix the law to be applied irrespective of the law of the states are more marked in the former than in the latter class. But, as will be pointed out,[1] the branch of law in which the Supreme Court has displayed the greatest independence of state law has been the commercial law, and in the great majority of commercial cases the federal courts obtain jurisdiction only by reason of the diversity of citizenship of the parties. It can hardly be said, therefore, that the power of legislation which Congress derives from this clause can be determined by this distinction.

From the viewpoint of this investigation we may therefore treat the various cases subjected to the judicial power of the United States as possessing the same character. The result is that the recognition that Congress possesses the legislative power under one clause in the judicial article involves the recognition of the same power under the other clauses, unless the question is affected, on the one hand, by the express provisions of the Constitution granting powers or imposing limitations on Congress or, on the other hand, by the general spirit of the Constitution considered as a whole.

Let us then take up, one by one, the cases included within the judicial power granted by the Constitution and see whether they are affected by the other provisions of that instrument, whether enabling or prohibitory.

In the first place, the judicial power of the United States extends to all cases in law and equity arising under the Constitution, the laws of the United States and treaties made or to be made under their authority. It is quite evident that the laws of the United States referred to in this paragraph are primarily the laws which Congress has the right to pass under other provisions of the constitution; for example, under article i, section

[1] *Infra*, pp. 592 *et seq.*

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8.[1] The Supreme Court has assumed, however, that the words "law and equity" qualify not merely the cases arising under the Constitution, the laws of the United States and treaties, but also the cases arising under the other grants of judicial power. Furthermore, inasmuch as Congress in section 34 of the Judiciary Act (now section 721 of the Revised Statutes) has provided that the laws of the states shall be the rules of decision only in cases at common law, the courts of the United States have felt at liberty to develop their own system of equity. They have felt not only at liberty but even obliged to do so if the United States courts are to exercise equity powers. For in some of the states, at the time of the adoption of the constitution, there were no courts of equity, while in others equitable and legal remedies had been joined in the same forms of action. The federal courts have therefore attempted, regardless of the decisions of state courts and even in some instances of state statutes, to work out, in large degree upon the basis of the decisions of the English Court of Chancery, a system of equitable remedies and of equity jurisprudence of their own, which may be in conflict with the law of some particular state or states.[2] The Supreme Court has said, further, that Congress has the right to legislate as to the equity jurisdiction of the United States courts, and that, where there is conflict between the statutes of Congress and those of the states with regard to this matter, the courts of the United States must follow the statutes of Congress.[3]

[1] Tennessee *v.* Davis, 100 U. S. 257; Gableman *v.* Peoria *etc.* Railroad Company, 179 U. S. 339.

[2] See Russell *v.* Southard, 12 Howard, 139, where the Supreme Court of the United States refused to be guided by the highest court of the state of Kentucky in determining whether parol evidence was admissible in an equitable action to show that what was apparently a deed was intended as a mortgage; Neves *v.* Scott, 13 Howard, 268, where the Supreme Court refused to modify its decision, so as to accord with the judgment of the highest State court of Georgia, as to the effect of a marriage contract; and Payne *v.* Hook, 7 Wallace, 425, where the Supreme Court of the United States permitted the use of an equitable remedy not permitted by the statutes of the state. See also McConihay *v.* Wright, 121 U. S. 201, 206, and Scott *v.* Neely, 140 U. S. 106, 111.

[3] *Cf.* Neves *v.* Scott, 13 Howard, 268. In McConihay *v.* Wright, 121 U. S. 201, 206, it is said that the equity jurisdiction of the federal courts "is vested as a part of

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In matters affecting ambassadors, other public ministers and consuls, little if any legislative power needs to be derived from the judicial power, since article i, section 9, paragraph 10 of the Constitution, which empowers Congress to punish offenses against the law of nations, gives the United States ample means of protecting through the criminal law the persons of diplomatic agents against attack.[1] In so far, however, as the private legal relations of such persons are concerned, the law is in the same condition as in the other cases in which the United States courts have jurisdiction by reason of the character of the parties. The consideration of this point may therefore be postponed until we examine those parts of the judicial article.

In the case of the clause relative to admiralty and maritime jurisdiction, as has been shown, the Supreme Court has held that Congress derives from it power to fix the maritime law. It is well to remember, however, that for a long time in our history the belief of the court was that Congress obtained its power to legislate upon such matters from the commerce clause rather than from the admiralty clause, and that it was only when it was thought that greater power could be derived from the latter clause that resort was had to it.

The clause with reference to controversies to which the United States shall be a party may fairly be regarded as authorizing Congress to subject the United States to the liability to be sued. As a matter of fact Congress has so provided in the act of 1855, establishing the United States Court of Claims, and in the Tucker Act of 1887, making the district and circuit courts courts of claims for certain classes of cases. Each of these acts has introduced into the law to be applied in these cases certain modifications which are binding upon the courts of the United States acting as courts of claims.[2]

We come now to the controversies between two or more

the judicial power of the United States in its courts by the Constitution and acts of Congress in execution thereof. Without the assent of Congress that jurisdiction cannot be impaired or diminished by the statutes of the several states regulating the practice of their own courts."

[1] United States *v.* Ortega, 11 Wheaton, 467.

[2] The Floyd Acceptances, 7 Wallace, 666.

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states, between a state and citizens of another state, between citizens of different states, between citizens of the same state claiming lands under grants of different states, and between a state or the citizens thereof and foreign states, citizens or subjects. Since the termination, early in our history, of the controversies regarding lands granted by different states, and since the passage of the eleventh amendment, the only controversies in this class which have retained their importance are those to which a state is a party, those between citizens of different states and those between citizens and aliens.

In a number of instances the Supreme Court has taken jurisdiction of controversies between states, but in few of these cases has the question been raised as to the power of Congress to fix the law which is to be applied to such cases. A marked exception to this statement is to be found, however, in the case of Kansas *v.* Colorado.[1] In this case a bill of equity was filed in the Supreme Court by the state of Kansas against the state of Colorado, to restrain the latter state from depriving the state of Kansas and its inhabitants of the water of the Arkansas River, which, it was alleged, was being diverted from its natural channel under the authority of the state of Colorado for the purpose of irrigating lands in that state. Since this was an equitable action, section 721 of the United States Revised Statutes did not oblige the court to apply the laws of the several states as the rules of decision. The application of the laws of the several states would, moreover, have been impossible, since Kansas held to the common law as to water rights while Colorado had abandoned it. The government of the United States asked to intervene in its case, alleging in its petition

> that legislation of Congress, decisions of courts and acts of the executive department have sanctioned and approved the use of water for irrigation purposes in the arid region, and that he who is prior in time is prior in right, and that it is recognized that the common-law doctrine of riparian rights is not applicable to the public land owned by the United States in the arid region.

The government also suggested that the "decree should em-

[1] 206 U. S. 46.

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brace in terms or in effect a recognition of the national law and of the government's right to direct the matter of water distribution on this non-navigable stream." In deciding this case the Supreme Court distinctly refused to adopt the view that Congress had any legislative power over matters of irrigation, even when the interests of two states were affected, adopting the theory that the United States government is a government of enumerated powers, and that, as no power to control irrigation matters had been granted to Congress, that body could not lay down the law which the court was to apply in such cases.

It may therefore be said that Kansas *v.* Colorado is an authority for the proposition that Congress has no power to lay down the law to be applied by the Supreme Court in controversies between states as to irrigation matters. But this case cannot be regarded as authority for the proposition that Congress does not derive legislative power from the judicial article.

In the first place, that particular point was not raised and was therefore not decided. The counsel for the government attempted to base the power of Congress to legislate, not upon the judicial article, but upon the commerce clause, contending that commerce is intercourse in its broadest sense, and that "conflicting irrigation rights between two states on the waters of a stream passing from one state to another involve the power over interstate commerce. Water is sold for irrigation and flows down stream and along ditches to the point of delivery." This view did not appeal to the court, which held that taking water for purposes of irrigation did not involve commercial questions except where navigation might be affected thereby.

In the second place, the august character of the contesting parties in these controversies between sovereign states has caused the court to regard itself as an international tribunal, which is to apply the principles of international law. This law is to be derived from a consideration of the customs and usages of nations rather than from the legislation of a body like Congress.

It is to be regretted that the Supreme Court has adopted this latter view. For, as it said in Missouri *v.* Illinois,[1] in

[1] 200 U. S. 496, 520.

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a case which did not fall within the power of Congress to regulate, the result of a declaration of rights by this court would be the establishment of a rule which would be irrevocable by any power except that of this court to reverse its own decision, an amendment of the Constitution or, possibly, an agreement between the states sanctioned by the legislature of the United States.

It is to be noted that one of the arguments accepted by the Supreme Court in favor of the legislative power of Congress in matters of maritime law was the necessity of developing the law. This argument would appear to have as much force in the matter of interstate controversies as in the matter of the maritime law.[1]

The decision of the Supreme Court in Kansas *v.* Colorado may accordingly be regarded as authority for the statement that Congress derives no legislative power from that part of the judicial article which declares that the judicial power of the United States shall extend to controversies between states; but it cannot be said that, because this is true, it follows that Congress does not derive legislative power from other portions of the judicial article.

Controversies between a state and citizens of another state are, since the eleventh amendment, controversies in which the state is plaintiff. They differ from controversies between states in that they have no international character, and they are to be treated from much the same point of view as controversies between citizens of different states.

We come then to the consideration of controversies between citizens of different states and between citizens and aliens. Does Congress derive any legislative power from this part of the judicial article?

Neither in the judicial article nor elsewhere in the Constitution is the exercise of such a power expressly granted or expressly prohibited. Conditions are the same here as in the case of the other judicial clauses, except that the legislative power of Congress under the commerce clause is more closely related to matters of admiralty and maritime jurisdiction than to con-

[1] *Infra*, p. 598.

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troversies between citizens of different states and between citizens and aliens.

Two things however, have contributed to the adoption of the view that Congress has not the same power of legislation in these classes of cases as in admiralty cases. One is the fact that Congress has made the admiralty jurisdiction exclusive, while it has provided that the jurisdiction of the United States courts in these other controversies shall be concurrent with that of the state courts, subject merely to the provisions of law as to the removal to the United States courts of certain cases of this sort originating in the state courts. The other is that, partly as a result of the exclusiveness of the jurisdiction of the admiralty courts of the United States, those courts have developed their own law, subject to the action of Congress, while in the case of controversies between citizens of different states the United States courts have generally followed the injunction of Congress to make the laws of the several states the rules of decisions in all cases at common law.

But, as has been pointed out, Congress may make the entire jurisdiction of the United States courts exclusive if it sees fit so to do, and the adoption by the United States courts of the laws of the several states as the rules of decision in cases at common law is due to a provision to that effect in an act of Congress, and not to any provision of the Constitution. It has already been noted that in matters of equity, in which the federal courts have not been obliged by the provisions of the Judiciary Act to follow the laws of the several states as rules of decision, these courts have developed other rules of their own; and that in so far as Congress has legislated regarding the equitable jurisdiction of these courts, they have felt obliged to apply such acts of Congress rather than the laws of the states.

Finally, it is to be noted that, notwithstanding the provision of Congress that the laws of the several states shall be the rules of decision in the federal courts in cases at common law where they apply, an important part of the law administered by the United States courts in dealing with controversies between citizens of different states is different from the law administered by the courts of the states. This difference is noticeable not only

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in the system of remedies which are applicable but also in the rules of law which are to be applied in the case of particular legal relations, or, in other words, in what are often called the rules of substantive law.

Congress has provided that forms and modes of proceeding in equity and admiralty suits shall be according to the principles of courts of equity and admiralty,[1] and that the practice, pleadings and forms and modes of proceedings in other civil causes shall conform as near as may be to the proceedings of the state within which the federal court sits.[2] But the courts have recognized the right of Congress to regulate any matter of procedure in the United States courts,[3] and Congress has in specific instances taken away from the federal courts the right to make use of certain remedies, such as *mandamus*, *certiorari* or injunction, of which the state courts make use.[4] Congress has also legislated with regard to the competency of witnesses and with regard to evidence in actions brought in the United States courts; and these courts have held, time and time again, that they are bound by the acts of Congress even where such acts are in conflict with the laws of the states.[5]

These are some of the cases in which Congress has by legislation determined the system of remedies which shall be applied in the United States courts. To sum up on this point, it may be said that, partly as a result of judicial decision and partly as a result of congressional legislation, the whole system of equity jurisprudence of the United States is independent of that of the states; that in a number of cases the common-law remedies are likewise independent; and that Congress has, with the approval of the Supreme Court, claimed and exercised the right to determine, often in opposition to the positive law of particular states, the law to be applied in the United States courts as regards the competency of witnesses and evidence in general.

[1] Revised Statutes, sec. 913. [2] *Ibid.* sec. 914.

[3] Southern Pacific Company *v.* Denton, 146 U. S. 202, 209.

[4] McIntire *v.* Wood, 7 Cranch, 504; *Ex parte* Van Orden, 3 Blatchford, 166; Snyder *v.* Marks, 109 U. S. 189. See also Cary *v.* Curtis, 3 Howard, 236.

[5] King *v.* Worthington, 104 U. S. 44; *Ex parte* Fisk, 113 U. S. 713, 721; Whitford *v.* Clark Company, 119 U. S. 522.

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While the decisions immediately above cited deal with the remedies applicable in the federal courts, some of them, rendered in cases of an equitable character, seem to recognize that either the federal judiciary or Congress has the right to determine the rules of substantive law to be administered in the equity courts of the United States.

When we come to consider more particularly the rules of substantive law which may be applied in the federal courts in common-law proceedings, we find that Congress has seldom taken any action as to the law to be applied in controversies where the jurisdiction of the federal courts results from the character of the parties, but that the federal courts themselves, in the exercise of their constitutional jurisdiction, have limited very seriously the application of the rule laid down in the Judiciary Act, which provides that the laws of the several states shall be the rules of decision in cases arising at common law in the courts of the United States.

In Swift *v.* Tyson,[1] decided in 1842, the Supreme Court was called upon to consider whether a federal court, having jurisdiction as a result of diversity of citizenship, was obliged by the 34th section of the Judiciary Act, (now section 721 of the Revised Statutes) to follow the decisions of a state court that a preëxisting debt was not a valuable consideration for a negotiable instrument. Justice Story said:

> That section provides "that the laws of the several states, except where the Constitution, treaties or statutes of the United States shall otherwise require or provide, shall be regarded as rules of decision in trials at common law in the courts of the United States in cases where they apply." In order to maintain the argument [that the United States courts are bound by the decisions of the state courts] it is essential therefore to hold that the word "laws" in this section includes within the scope of its meaning the decisions of the local tribunals. In the ordinary use of language it will hardly be contended that the decisions of courts constitute laws. They are, at most, only evidence of what the laws are, and are not of themselves laws. They are often re-examined, reversed and qualified by the courts themselves whenever

[1] 16 Peters, 1, 18.

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they are found to be either defective or ill founded or otherwise incorrect. The laws of a state are more usually understood to mean the rules and enactments promulgated by the legislative authority thereof or long-established local customs having the force of laws. In all the various cases which have hitherto come before us for decision this court have uniformly supposed that the true interpretation of the thirty-fourth section limited its application to state laws strictly local, that is to say, to the positive statutes of the state and the construction thereof adopted by the local tribunals, and to rights and titles to things having a permanent locality, such as the rights and titles to real estate and other matters immovable and intraterritorial in their nature and character. It never has been supposed by us that the section did apply or was designed to apply to questions of a more general nature, not at all dependent upon local statutes or local usages of a fixed and permanent operation, as for example to the construction of ordinary contracts or other written instruments and especially to questions of general commercial law, where the state tribunals are called upon to perform the like functions as ourselves, that is, to ascertain upon general reasoning and legal analogies what is the just rule furnished by the principles of commercial law to govern the case. And we have not now the slightest difficulty in holding that this section, upon its true intendment and construction, is strictly limited to local statutes and local usages of the character before stated, and does not extend to contracts and other instruments of a commercial nature, the true interpretation and effect whereof are to be sought, not in the decisions of the local tribunals, but in the general principles and doctrines of commercial jurisprudence.

The Supreme Court therefore held that it would not follow the decisions of the New York courts.

In the application of this theory the federal courts have determined for themselves what is the law not only with regard to negotiable paper but also with regard to the liabilities of carriers.[1] And since the decision of Smith *v.* Tyson, the doctrine that the federal courts are not obliged to adopt the decisions of the courts of the several states as the rules of decision in matters of general commercial law has been extended in two ways.

[1] Myrick *v.* Michigan Central Railway Company, 107 U. S. 102; Lake Shore *etc.* Railroad Company *v.* Prentice, 147 U. S. 101; N. Y. Central Railroad Company *v.* Lockwood, 17 Wallace, 357.

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In the first place, the same general principle has been applied in other branches of the law, for example in the law of master and servant. In Baltimore and Ohio Railroad *v.* Baugh[1] the Supreme Court decided that it would determine for itself, irrespective of the decisions of the Ohio courts, what was the extent of the application of the rule that a servant could not recover from the master where the negligence causing the damage was that of a co-servant. In the second place, the Supreme Court has held that, in determining the rules of law affecting commercial paper, it will disregard even a statute which it considers to be opposed to the rules of the general commercial law. In the case of Watson *v.* Tarpley the court said:

> Whilst it will not be denied, that the laws of the several states are of binding authority upon their domestic tribunals, and upon persons and property within their appropriate jurisdiction, it is equally clear that those laws cannot affect, either by enlargement or diminution, the jurisdiction of the courts of the United States as vested and prescribed by the Constitution and laws of the United States, nor destroy or control the rights of parties litigant to whom the right of resort to these courts has been secured by the laws and Constitution. This is a position which has been frequently affirmed by this court, and would seem to compel the general assent upon its simple enunciation. . . . The general commercial law being circumscribed within no local limits, nor committed for its administration to any peculiar jurisdiction, and the Constitution and laws of the United States having conferred upon the citizens of the several states, and upon aliens, the power or privilege of litigating and enforcing their rights acquired under and defined by that general commercial law, before the judicial tribunals of the United States, it must follow, by regular consequence, that any state law or regulation, the effect of which would be to impair the rights thus secured, or to divest the federal courts of cognizance thereof, in their fullest acceptation under the commercial law, must be nugatory and unavailing.[2]

[1] 149 U. S., 368.

[2] 18 Howard, 517, at pp. 520, 521. See, however, Phipps *v.* Harding, 34 U. S. Appeals, 148, which holds that the federal courts are bound by state statutes with regard to the substantive commercial law, and distinguishes (at p. 159) this decision from that rendered in Watson *v.* Tarpley on the ground that the statute there disregarded affected the remedy only. See also Equitable Trust Company *v.* Fowler, 141

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No attempt has been made to give an exhaustive enumeration of the cases in which the federal courts have so construed section 721 of the Revised Statutes of the United States as to permit them, even in common-law cases, to act independently of the laws of the several states in the determination of the law applicable to the cases before them; but enough has been said, it is hoped, to show that the federal courts have considerable independence in determining what law is to be applied in the cases before them and, if need be, may work out the law without regard to the decisions of the state courts.

This being the case, it cannot well be doubted that Congress itself has the power to change the law laid down by the federal courts. For, as Mr. Justice Bradley said in The Lottawanna,[1] in asserting the power of Congress to limit the liability of shipowners to shippers:

> We must always remember that the court cannot make the law; it can only declare it. If within its proper scope any change is desired in its rules, other than those of procedure, it must be made by the legislative department. It cannot be supposed that the framers of the Constitution contemplated that the law should forever remain unalterable.

In this case, it is true, Justice Bradley derives the power of Congress to fix the law in the particular case from the commerce clause; but in the later case of *In re* Garnett[2] he as distinctly derives the power of Congress to limit the liability of shipowners, in the case of shipments of goods from one place to another in the same state, from the judicial article, saying:

> It is unnecessary to invoke the power given to Congress to regulate commerce with foreign nations and among the several states in order

U. S. 384, which, without argument, holds that state legislation controls the federal courts in determining what local law governs the validity of a contract alleged to be usurious. In Burgess *v.* Seligman, 107 U. S. 20, the Supreme Court refused to follow in the construction of a state statute the decision of a state court, rendered subsequently to the decision of the case in the lower federal court. Here the question at issue was whether the voting by the pledgee of stock held as security for a loan estopped such pledgee from showing, in a suit against him as owner, that he was not the owner but the pledgee.

[1] 21 Wallace, 558.

[2] 141 U. S. 1.

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to find authority to pass the law in question. The act of Congress which limits the liability of ship-owners was passed in amendment of the maritime law of the country, and the power to make such amendments is coextensive with the law. It is not confined to the boundaries or class of subjects which limit and characterize the power to regulate commerce, but in maritime matters it extends to all matters and places to which maritime law extends.[1]

The recent decision in the Employers' Liability cases[2] may seem at first blush to deny the right of Congress to legislate with regard to the private legal relations of individuals. But an examination of the case shows that, in the words of Justice White, "the right of action was expressly based upon the act of Congress of July 11, 1906," which attempted through the exercise by that body of its commerce power to regulate the relations of employers and employed when engaged in interstate commerce. All that the case holds is that Congress cannot through the exercise of the commerce power regulate the relations of employees not engaged in interstate commerce. As the lower federal court obtained jurisdiction under an alleged law of the United States and not through the diversity of citizenship of the parties to the suit, the case cannot be held to lay down any rule as to the legislative power which Congress may exercise under the judicial article of the Constitution.

Are there now, as the result of the express prohibitions on the powers of Congress or of the general spirit of the Constitution, any limits to this legislative power of Congress?

Most of the express limitations upon the power of Congress are limitations upon the express powers granted, as, for example, those imposed upon the taxing power. There are, how-

[1] See also the opinion of the Supreme Court in Butler *v.* Boston Steamship Company, 130 U. S. 527, 557, where it is said: "As the Constitution extends the judicial power of the United States to 'all cases of admiralty and maritime jurisdiction,' and as this jurisdiction is held to be exclusive, the power of legislation on the same subject must be in the national legislature and not in the state legislatures". It will be remembered that the admiralty jurisdiction is exclusive not because the Constitution but because Congress has made it so, and that Congress could similarly make the jurisdiction of the federal courts resulting from diversity of citizenship exclusive, instead of concurrent with that of the state courts, as it now is.

[2] 207 U. S. 463.

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ever, a few, such as those imposed by the fifth amendment, which have been held to limit the legislative power of Congress under the commerce clause,[1] and which, if the occasion required, would undoubtedly be held to limit any of its implied legislative powers also. But such express limitations are few in number and would not seriously diminish those powers. The statement contained in article x of the amendments, to the effect that "the powers not delegated to the United States by the Constitution nor prohibited by it to the states, are reserved to the states or to the people," can not be regarded as controlling, since the question at issue is whether a power of legislation has been granted to Congress by article iii when taken in connection with article i, section 8, paragraph 18.

Is there, however, anything in what has been termed "the spirit of the Constitution" which would prevent the exercise by Congress of legislative power under the judicial article. It cannot be denied that, at first blush, one is apt to regard the proposition that Congress has the right to determine the private legal relations of citizens of the United States with aliens and those of citizens of one state with citizens of another as preposterous and as as clearly out of harmony with the spirit of the Constitution; but it must always be kept in mind that existing conditions are due not to the Constitution but to Congress, which has determined to adopt the laws of the several states as the rules of decision for the federal courts. This action of Congress was, however, taken in the latter part of the eighteenth century, at a time when social and economic conditions were, as compared with the present, very decentralized, and when the jealousy of the exercise of power by the national government was very great and the insistence upon the rights of the several states much more marked than it is at present. It must further be remembered that the movement for a centralization of the law of the United States is already in full swing. Congress has already centralized the maritime law, the federal courts are centralizing the commercial law and the law of master and servant, and state commis-

[1] Monongahela Navigation Company *v.* United States, 148 U. S. 312; Champion *v.* Ames, 188 U. S. 321; United States *v.* Adair, 208 U. S. 161.

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sioners and houses of governors are meeting every year in the effort to bring about uniformity in those branches of the law in which uniformity of the law is believed to be desirable. Who, in view of these facts, will dare to say that if Congress, becoming convinced of the desirability of the existence of a uniform law to be administered by the federal courts in controversies between citizens and aliens and between citizens of different states, shall make provision by legislation for such law, the Supreme Court will say it nay? Is not the real spirit of the Constitution that matters requiring uniformity of treatment shall receive that treatment rather than that a special set of subjects shall for all time be assigned to Congress and another set to the states? Was not the Constitution purposely silent as to the law to be applied by the United States courts? And is not the action of the Supreme Court in extending the admiralty jurisdiction and in deciding that Congress has power under the judicial article to fix the maritime law based upon the idea that the social needs of the country require uniformity in this branch of the law? If the same needs are felt in other branches of the law, why should it be claimed that Congress has not the constitutional power to satisfy those needs? Certainly there is no distinct prohibition of such action. On the other hand there is the express grant of power to Congress to make all laws which shall be necessary and proper for carrying into execution all powers vested by the Constitution in the government of the United States or in any department or officer thereof; and it cannot be denied that the judicial power has been vested by the Constitution in the courts of the United States and that courts without a substantive law are inconceivable. This was certainly the opinion of Chief Justice Marshall as to the power of Congress to legislate concerning the remedies to be applied in the federal courts, and this is the theory upon which both Congress and the Supreme Court have acted in the development of the remedies which may be used in those courts. No distinction between remedies and substantive law is made by the Constitution in this respect.

Are there, however, any parts of the law to be applied by the United States courts in controversies arising as a result of

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diversity of citizenship to which this legislative power of Congress may not be extended?

In answering this question we must be careful not to lay too great emphasis upon those decisions of the Supreme Court made in applying section 721 of the United States Revised Statutes, which hold that, under the law as it now stands, the federal courts must apply state laws in what are regarded as purely local matters, such as real property; for these decisions were made not in interpreting the Constitution but in construing a statute of Congress; and there is more than one case decided by the federal courts, sitting as courts of equity, in which those courts have refused to follow the decisions of state courts even where the title to land in a state was affected thereby.[1] But in spite of these equity cases, it cannot be denied that the law of real property is probably more thoroughly a matter of local concern than almost any other branch of the law; and it may be assumed that it will be with the greatest hesitation that the Supreme Court will ever recognize a power in Congress, should Congress ever desire to exercise it, to regulate the law of real property. It must be remembered, however, that in cases of diversity of citizenship the United States courts have jurisdiction regardless of the character of the controversy.

Similar considerations present themselves when we come to the law governing domestic relations. There are several utterances of the Supreme Court which go far to support the proposition that the judicial power of the United States does not extend over the field of domestic relations, although, it must be confessed, no satisfactory reason is given for the statement. Thus in Barber *v.* Barber,[2] Justice Wayne says, without either argument or citation: "We disclaim altogether any jurisdiction in the courts of the United States upon the subject of divorce, or for the allowance of alimony, either as an original proceeding in chancery or as an incident to divorce *a vinculo* or to one from bed and board." In this case, however, the court held that a woman who was separated *a mensa et thoro* from her hus-

[1] See, for example, Russell *v.* Southard, 12 Howard, 139.

[2] 21 Howard, 582.

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band could on the ground of diversity of citizenship sue her husband, who had left the state of the marriage domicile, in the courts of the United States, in order to recover against him a claim for alimony based on the decree of the state court granting her the separation. Again, in the case of *In re* Burrus,[1] the court says, in denying to a father a *habeas corpus* to recover possession of his infant child:

> The whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the states and not to the laws of the United States. As to the right to the control and possession of this child as it is contested by its father and its grandfather, it is one in regard to which neither the Congress of the United States nor any authority of the United States has any special jurisdiction. Whether the one or the other is entitled to the possession does not depend upon any act of Congress or any treaty of the United States or its Constitution.

What is here said as to the law of the domestic relations is, however, merely dictum, as the case was decided on the ground that under the act of Congress the courts of the United States do not have jurisdiction to issue the *habeas corpus* in this class of cases.[2]

The lack of any instance of a suit for divorce in the United States courts is of course primarily due to the fact that Congress has never conferred upon them such jurisdiction. The failure of Congress to act may of course be due to the belief that a divorce case is not a case in law or equity and that no court has divorce powers except as a result of statute.[3] But it is to be remembered that the term "law and equity" is to be liberally interpreted, and it has been decided that the federal courts may administer new equitable remedies provided by state statutes.[4]

The probate law is in somewhat the same position as the law

[1] 136 U. S. 586.

[2] But see Andrews *v.* Andrews, 188 U. S. 32, and Haddock *v.* Haddock, 201 U. S. 575, where a similar statement is made a *ratio decidendi* and may therefore be regarded as part of the actual decision.

[3] Erkenbrach *v.* Erkenbrach, 96 N. Y. 456.

[4] See remarks of Justice Matthews in Ellis *v.* Davis, *infra*, pp. 602, 603.

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of domestic relations. That is, whatever may be the constitutional extent of the powers which may be given by Congress to the federal courts, those courts have never attempted to exercise a probate jurisdiction or, even by an equitable proceeding, to set aside the probate of a will.[1] Their reasons for pursuing this course, however, have been statutory rather than constitutional; and they have been ready to take jurisdiction of controversies between citizens of different states arising out of the transfer of property under a will or in the case of intestacy.[2] Thus they have permitted the removal to them of suits instituted in state courts to annul a will as a muniment of title, where the will had been admitted to probate as a result of a prior proceeding in a state court and where the state law recognized such a jurisdiction in the state courts. This was done in Gaines *v.* Fuentes.[3] In rendering the decision in this case Justice Field said:

In the case of Broderick's Will [21 Wallace, 503] the doctrine is approved, which is established both in England and in this country, that by the general jurisdiction of courts of equity, independent of statutes, a bill will not lie to set aside a will or its probate; and, whatever the cause of the establishment of this doctrine originally, there is ample reason for its maintenance in this country, from the full jurisdiction over the subject of wills vested in the probate courts, and the revisory power over their adjudications in the appellate courts. But that such jurisdiction may be vested in the state courts of equity by statute is there recognized, and that, when so vested, the federal courts, sitting in the states where such statutes exist, will also entertain concurrent jurisdiction in a case between proper parties.

There are, it is true, in several decisions of this court, expressions of opinion that the federal courts have no probate jurisdiction, referring particularly to the establishment of wills; and such is undoubtedly the case under the existing legislation of Congress. The reason lies in the nature of the proceeding to probate a will as one *in rem*, which does

[1] Fouvergue *v.* Municipality, 18 Howard, 470; Broderick's Will, 21 Wallace, 503; Reed *v.* Reed, 31 Fed. 49; *In re* Cilley, 58 Fed. 977; *In re* Aspinwall's Estate, 83 Fed. 851; Wold *v.* Franz, 100 Fed. 680.

[2] See Foley *v.* Hartley, 72 Fed. 570; *In re* Foley, 76 Fed. 390; Craigie *v.* McArthur, 4 Dillon, 474.

[3] 92 U. S. 10.

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not necessarily involve any controversy between parties: indeed in the majority of instances, no controversy exists. In its initiation all persons are cited to appear, whether of the state where the will is offered, or of other states. From its nature, and from the want of parties, or the fact that all the world are parties, the proceeding is not within the designation of cases at law or in equity between parties of different states, of which the federal courts have concurrent jurisdiction with the state courts under the Judiciary Act; but whenever a controversy in a suit between such parties arises respecting the validity or construction of a will, or the enforcement of a decree admitting it to probate, there is no more reason why the federal courts should not take jurisdiction of the case than there is that they should not take jurisdiction of any other controversy between the parties.

This same doctrine was laid down by Justice Matthews in Ellis *v.* Davis.[1] He said:

The judicial power of the United States extends, by the terms of the Constitution, "to controversies between citizens of different states"; and on the supposition, which is not admitted, that this embraces only such as arise in cases "in law and equity," it does not necessarily exclude those which may involve the exercise of jurisdiction in reference to the proof of the validity of wills. The original probate, of course, is mere matter of state regulation, and depends entirely upon the local law; for it is that law which confers the power of making wills, and prescribes the conditions upon which alone they may take effect; and as, by the law in almost all the states, no instrument can be effective as a will until proved, no rights in relation to it, capable of being contested between parties, can arise until preliminary probate has been first made. Jurisdiction as to wills, and their probate as such, is neither included in nor excepted out of the grant of judicial power to the courts of the United States. So far as it is *ex parte* and merely administrative, it is not conferred, and it cannot be exercised by them at all until, in a case at law or in equity, its exercise becomes necessary to settle a controversy of which a court of the United States may take cognizance by reason of the citizenship of the parties. It has often been decided by this court that the terms "law" and "equity," as used in the Constitution, although intended to mark and fix the distinction between the two systems of jurisprudence as known and practised at the time of its adoption, do not restrict the jurisdiction con-

[1] 109 U. S. 485, 496, 497.

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ferred by it to the very rights and remedies then recognized and employed, but embrace as well not only rights newly created by statutes of the states, as in cases of actions for the loss occasioned to survivors by the death of a person caused by the wrongful act, neglect or default of another (Railway Company *v.* Whitton, 13 Wallace, 270, 287; Dennick *v.* Railroad Company, 103 U. S. 11), but new forms of remedies to be administered in the courts of the United States, according to the nature of the case, so as to save to suitors the right to trial by jury in cases in which they are entitled to it according to the course and analogy of the common law.

Applying these principles, the Supreme Court has often held that "the general equity jurisdiction of the circuit court of the United States to administer, as between citizens of different states, the assets of a deceased person within its jurisdiction cannot be defeated or impaired by laws of a state undertaking to give exclusive jurisdiction to its own courts."[1] But the power which the courts of the United States thus have over the estates of deceased persons does not give them the right to assume full control of such estates so as to distribute them among all persons interested therein, citizens and non-citizens. A debt against an estate may be established in a federal court; but the debt so established "must take its place and share of the estate as administered by the probate court; and it cannot be enforced by process directly against the property of the decedent."[2]

Finally, it is difficult to conceive that Congress could derive from the judicial article any legislative powers with regard to matters falling within the administrative law of the States. It could hardly undertake to determine, for example, the law governing taxation, officers, police power or municipal corporations. It is true, of course, that there are a number of provisions in the United States Constitution, like the fourteenth and fifteenth amendments, which limit the powers of the states, and which at the same time expressly confer upon Congress the power to enforce these limitations by appropriate legislation. The Supreme

[1] Lawrence *v.* Nelson, 143 U. S. 215, 223. See also Clark *v.* Bever, 139 U. S. 96, 103; Hayes *v.* Pratt, 147 U. S. 557; Payne *v.* Hook, 7 Wallace, 425.

[2] Byers *v.* McAuley, 149 U. S. 608, 620.

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Court has interpreted the fourteenth amendment as confining Congress to legislation directed against the actions of the states[1]; and it is difficult to see how, under this amendment, Congress could prescribe the administrative proceedings which states must follow in depriving a person of his life, liberty or property. Without such legislation, however, the Supreme Court has already laid down certain limits beyond which the states may not go.

It is true also that, in the exercise of their jurisdiction based on diversity of citizenship, the federal courts have developed in the case of municipal bonds a law of estoppel by recital which is quite opposed to the law administered in the courts of some of the states. But it is very doubtful, to say the least, whether the federal courts could independently determine the regularity of the issue of municipal bonds where the matter had been regulated by a state statute; and if the federal courts have no such power, Congress could hardly regulate the exercise thereof. At the same time it is to be remembered that the law of municipal bonds and other similar securities has a great resemblance to the law of negotiable paper, in regard to which the federal courts have claimed large powers of independent action.

Finally, it is well to remember that no provision of the Constitution either expressly or impliedly imposes upon the United States government the obligation to administer in its courts any law of which it does not approve. The courts of the United States are instruments of the United States government, just as the post office is such an instrument; and it has been held that Congress has the right to determine that it will not lend itself or its post offices to the distribution of mail matter of which it does not approve.[2] What is there in the Constitution to prevent Congress from determining that it will not permit its courts to be made use of to administer laws which it deems to be improper? It would not by so doing infringe upon the rights of the states, any more than a court of England would be infringing upon the rights of the state of New York if it applied

[1] Cruikshank *v.* United States, 92 U. S. 542.

[2] *In re* Rapier, 143 U. S. 110.

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to a case before it, arising between a British citizen and a citizen of New York, an act of Parliament contrary to the general principles of international private law.

In this paper it is not intended to advocate the immediate occupation by Congress of the field which, it is here argued, is constitutionally open to it. The whole purpose of this investigation has been to ascertain if, under the constitution as it now stands, a centralization of the law is possible along the lines on which the future development of the country may make such centralization desirable.

II

The question, how far Congress has attempted, or in the absence of federal legislation the federal courts themselves have attempted, to lay down the substantive law to be applied by them in the exercise of the judicial power conferred upon them by article iii of the constitution, has been practically answered in the foregoing pages. By way of summing up the points already noted, it may be said that Congress has laid down the rule that, in cases at common law, the federal courts are, except as otherwise provided, to make use of the laws of the several states. Congress has, however, otherwise provided as to the competency of witnesses. The United States courts have developed their own system of equity jurisprudence; and they have acted independently of the decisions of the state courts and, in rare cases, even of state statutes, in certain branches of the law, prominent among which are the commercial law and the law of master and servant. Practically the whole field of admiralty and maritime law is regulated by Congress, whose action is regarded as controlling that of the states in those few cases in which the states have been recognized as possessing concurrent powers of action. Congress has also fixed the liabilities of the United States government acting in a private legal capacity as well as those of the officers of the United States.

It cannot therefore be said that, apart from the maritime law and the law affecting the liabilities of the United States government and its officers, in which the jurisdiction of the federal courts is for the most part made exclusive by act of Congress,

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either Congress or the federal courts have claimed or exercised the right to determine the law to be applied by the federal courts in their exercise of the judicial power granted to the United States by the constitution. But the few cases in which the claim has been made by the federal courts, when taken in connection with the extensive powers of legislation which Congress, with the approval of the Supreme Court, has actually exercised in regard to the maritime law, go far towards proving the proposition that Congress possesses and has exercised legislative powers which are derived from the judicial article of the constitution.

III

The third point to which it is desirable to direct attention is the effect which the recognition of the legislative power here attributed to Congress would have on our law.

The answer to this question is dependent in large measure upon a consideration of two points: the extent to which the jurisdiction of the federal courts in cases of diversity of citizenship is limited by congressional legislation and may be widened by Congress; and the extent to which, under the decisions of the federal courts, diversity of citizenship may be artificially produced, for example, by assignment of claims or by change of residence, for the purpose of establishing federal jurisdiction.

Inasmuch as Congress has the right to vest in the federal courts such portion of the judicial power of the United States as it sees fit and need not grant the entire judicial power, it may limit the jurisdiction of such courts in cases of diversity of citizenship. As a matter of fact it has done so, in the act of March 3, 1875, chapter 475,[1] as amended. In this act the jurisdiction of the circuit courts is limited to suits of a civil nature at common law or in equity where the matter in dispute exceeds, exclusive of interest and costs, the sum of two thousand dollars. It is furthermore provided that, in case the jurisdiction is based on diversity of citizenship, no circuit or district court shall have cognizance of any suit, except upon foreign bills of exchange,

[1] 18 Statutes at Large, 470.

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to recover the contents of any promissory note or other chose in action in favor of any assignee, or of any subsequent holder, if such instrument be payable to bearer and be not made by any corporation, unless such suit might have been prosecuted in such court to recover said contents if no assignment or transfer had been made. Another section of the same act provides for the removal by the defendant to the circuit court of any suit begun in a state court of which the circuit court has jurisdiction by reason of diversity of citizenship.

Under these provisions either the plaintiff may initiate the suit in a federal court or the defendant may remove it to the federal court if it has been begun in a state court; so that it is possible, where either of the parties to a suit of which the federal courts have jurisdiction so desires, to have the case tried in such courts, although the act of Congress expressly provides that the federal courts in these cases of diversity of citizenship shall have a jurisdiction which is concurrent with that of the state courts. If, therefore, the people of this country were on the whole better satisfied with either the procedure of the federal courts or with the law administered therein, and if Congress should remove the prohibition as to assignments, they could, in cases of diversity of citizenship, neglect the state courts and try almost all their cases in the federal courts.

The possibility of a great increase of the work of the federal courts was undoubtedly present in the mind of Congress when it passed the law cited above, denying to the federal courts jurisdiction where there had been an assignment of a promissory note or other chose in action in order to give a federal court jurisdiction. This prohibition, however, is purely statutory and may therefore be removed, as it was imposed, by Congress.

Further, notwithstanding the prohibition of assignment, there are still certain claims which may be the basis of suit and which may be assigned; and the Supreme Court has held that, if there is a consideration for the assignment, without which consideration the federal courts will not take jurisdiction,[1] the mere

[1] Bernards Township *v.* Stebbins, 109 U. S. 341.

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fact that the sole purpose of the assignment was to give the federal courts jurisdiction will not divest them of jurisdiction.[1] The lower United States courts have also held that, if a citizen removes from one state to another in order to prosecute a suit in the courts of the United States, provided the removal be real, the motive of the act cannot be inquired into[2]; and that change of domicile or acquisition of citizenship after the commencement of a suit in the federal courts will not oust their jurisdiction if such jurisdiction were rightfully acquired originally.[3]

This being the law, we have only to remember what happened long ago, in England, when the royal courts, with their more satisfactory procedure and remedies, came into competition with the popular courts. These latter bodies found themselves deserted to such an extent by suitors, who preferred the justice administered by the royal courts, that they gradually dropped out of existence, although they were never abolished by act of Parliament.

Of course the jurisdiction of the federal courts could not, under the existing Constitution, be extended so far as was that of the royal courts. There would of necessity remain considerable litigation between residents of the same state, and there are parts of the law which would presumably continue to be determined by the courts or the legislatures of the states. But the activity of the state courts as compared with that of the federal courts would be so small and their influence so slight that they could hardly fail to be dominated by the latter, and the federal decisions would thus exercise a vastly greater force than at present for the unification of the law.

FRANK J. GOODNOW.

[1] Lehigh *etc.* Company *v.* Kelly, 160 U. S. 327.

[2] Briggs *v.* French, 2 Sumner, 251.

[3] Haracovic *v.* Standard Oil Company, 105 Fed. Rep. 785, and cases cited.

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THE MORTGAGE RECORDING TAX

NOWHERE are the iniquities of the general property tax more apparent than in its application to mortgage credits. One method of attacking these evils seems not yet to have excited general attention. It is fairly well known that since 1906 New York has levied a recording tax in lieu of mortgage taxation under the general property tax. It is perhaps not so generally realized that two other states have pursued the same course, one since 1903 and one since 1907; that in two other jurisdictions a recording tax and a stamp tax play respectively a real though inconspicuous part in the taxation of mortgages; that in another state the New York scheme was in 1909 adopted by the legislature but vetoed by the governor, chiefly on constitutional grounds; and that in still another state the same proposition was recommended to the legislature of 1909 by a special tax commission, which had carefully investigated the tax problems of the state, and was rejected rather for its novelty than for any other reason. The object of the present paper is briefly to examine the mortgage-recording tax in the jurisdictions where it occurs, to review the arguments in its favor, and to consider whether the plan, if supported at all, is to be advocated merely as a temporary expedient, or as an end in itself, the long-sought-for solution of the difficulties of mortgage taxation.

Of the fifty-one jurisdictions within the United States (not including Alaska or the Canal Zone), thirty-three now attempt, where real estate is mortgaged, to tax the mortgageor on the full value of the land and the mortgagee on the face value of the mortgage credit, both at the usual local rate of taxation. In three of these jurisdictions (Michigan, Oregon and Porto Rico) mortgaged land was for some years exempt to the amount of the debt secured by it. In another (Missouri) a constitutional amendment permitting the same exemption was nullified by the federal courts because it excluded certain corporations from its operation. In Indiana the mortgageor may have the amount of

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the mortgage indebtedness, not exceeding $700, deducted from the assessed value of the mortgaged premises; but the deduction may not be greater than one-half of the assessed value of the real estate, and, where the deduction is claimed and allowed, the mortgage credit which has been deducted is assessed as personal property of the mortgagee at his place of residence.

Of the remaining eighteen jurisdictions, seven (Arizona, Colorado, Delaware, Idaho, Louisiana, Utah and Washington) either by law or in practice exempt mortgage credits from taxation; six (California, Connecticut, Hawaii, Massachusetts, New Jersey and Wisconsin) exempt them in effect by exempting the land to the amount of the debt and permitting the mortgageor by contract to assume the the tax on this debt, which is considered an interest in the real estate; and two (Maryland and Pennsylvania) tax mortgages to the mortgagee at a low annual rate.

The mortgage-recording tax[1] in lieu of other taxation of mortgage credits is found in Alabama, Minnesota and New York.

In Alabama the tax is at the rate of fifteen cents on each $100 of indebtedness secured by "mortgage, deed of trust, contract of conditional sale or other instrument in the nature of a mortgage . . . executed so as to convey real property or any interest in real property or personal property" within the state. The tax is paid to the judge of probate, who notes the payment on the original document, thus entitling it to record; and the recorded instrument and the debt which it evidences are exempt from further taxation. Where part of the real estate covered by the conveyance is located out of the state, the owner of the mortgage may petition the state board of compromise to ascertain the proportion of the debt for which the recording tax should be paid in Alabama; or he may pay the tax for the whole debt and, after recording the mortgage,

[1] Virginia, which taxes mortgages under the general property tax, has a small recording tax for all deeds, including mortgages; and Hawaii, which in effect exempts mortgages from taxation under the general property tax (although it reaches the income by an income tax), has a series of stamp taxes upon mortgages, amounting to one-tenth of one per cent on the first $1000, two-tenths of one per cent on the next $9000, and three-tenths of one per cent on the remainder of the debt.

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petition the board to ascertain the amount of refund which he should receive. The statute states that the tax is to be paid "by the lender." Of the proceeds of the tax above the probate judge's fee of five per cent, the county receives one-third, the state two-thirds.

The original Alabama recording tax was enacted in 1903.[1] It was slightly modified in 1907.[2] The state tax commission furnishes the following figures of receipts by the state from the tax since its enactment (two-thirds of the net proceeds) and from the state tax on rights and credits[3]:

Year	Tax on credits	Mortgage tax
1900	$74,919	(*Not in effect*)
1901	70,389	" " "
1902	56,512	" " "
1903	25,923	$59,321
1904	(*Proceeds refunded*)	75,667
1905	19,544	67,243
1906	12,538	103,659
1907	6,675	88,942

The tax commission further reports that the law

is working very satisfactorily to all. The results in raising revenue . . . are considered here by the friends of the mortgage tax as the best evidence of the popularity of the law and of its enforcement. It is a law that is self-enforcing, one that is seldom dodged by even the most hardened tax-dodger.

The following are said to be the criticisms upon the law current in the state: it does not satisfactorily provide for the taxation of bond-issue mortgages; it does not allow the voluntary payment of the tax upon mortgages made and recorded prior to the time when the act went into effect, although it applies to extensions and renewals; the rate of the tax is too low; and the tax is not graduated according to the length of time the loan is to run. All these criticisms except the last are met by the New York mortgage-recording tax.

[1] Acts of 1903, p. 227. [2] Acts of 1907, p. 403.

[3] The state rate of taxation has been sixty-five cents upon each $100 since 1901, prior to which it was seventy-five cents. A change in classification was made between 1901 and 1903 which caused the decrease in collections in 1902.

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In New York, chapter 729 of the Acts of 1905 established an annual tax of fifty cents upon each $100 of outstanding principal of all mortgages, except those held by exempt institutions. The tax was collected through an elaborate machinery, of which the registry of deeds was the most important part. Contracts to shift the tax upon the debtor were declared void, except where the debtor was a corporation. The incentive for the act was the tendency toward the separation of state and local revenues, which had been increasingly manifest in the legislation of the state. The state needed more "indirect" revenue, and real-estate mortgages, hitherto in practice untaxed in the richest part of the state, offered an inviting source. The tax remained in force about a year. Careful figures compiled by the New York Tax Reform Association, after the act had been in operation some months, showed that its effect had been to increase the rate of interest by more than the rate of the tax above the rate of interest which would obtain were the mortgages either expressly or practically exempt.

By chapter 532 of the Acts of 1906 (amended by chapter 340 of the Acts of 1907[1]) a recording tax with a single payment on each mortgage was substituted for the annual tax, chiefly in consequence of the strenuous opposition to the annual tax by the real-estate interests in the city of New York. Absolute exemption of mortgages from taxation was the ideal sought; but certain persons who believed that capital invested in mortgages should make at least a slight contribution to governmental expenses, succeeded in obtaining the mortgage-recording tax as a compromise measure. The universal testimony seems to be that the result is so successful that all parties would oppose any further radical change.

By the terms of the act, all mortgages on real property, even though part of the security is personal property, all executory contracts for real property, and all contracts by which a secured indebtedness is increased, may be recorded only upon the payment of fifty cents for each $100 of indebtedness which is or may be secured thereby. Correction mortgages, or mort-

[1] Further amended in minor particulars by Acts of 1909, ch. 412, and Acts of 1910, ch. 601.

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gages by which additional security is given without increasing the debt, are not taxable under the terms of the act, but mortgages made before the act took effect may be voluntarily subjected to the tax. Mortgages for indefinite amounts or for indeterminate contract obligations are taxed for the full value of the property given as security, unless the owner files a sworn statement of the maximum amount which is to be secured by the mortgage. In the case of trust mortgages to secure bonds after the original statement of the amount of the bond-issue has been filed, and the tax paid on that basis, subsequent statements may be filed, covering further issues of bonds, and these become valid only upon payment of a further tax on the amount of the new issue. Where land is located in several jurisdictions, the state board of tax commissioners determines the amount of tax due in each jurisdiction. Of the proceeds of the tax, half goes to the state and half to the county. Mortgages which have paid the tax are exempt from further taxation, except as they enter into the assets of banking and other institutions. No mortgages are exempt from the tax by reason of parties or ownership.

The receipts from the taxation of mortgages have been as follows:

	Annual tax[1]		Recording tax		
	1905–06	1906–07	1907–08	1908–09	1909–10
Gross taxes	$935,291	$4,950,276	$3,399,998	$3,755,649.99	$3,910,987.40
Expenses	70,209	68,880	53,392	57,437.76	57,872.89
Net taxes	865,082	4,884,036	3,341,605	3,698,212.23	3,853,114.51

The New York Tax Reform Association has compiled figures showing the average rate of interest on loans secured by mortgages in New York county for three periods of eight months each. In the first period, when mortgages were liable to assessment as personal property, the rate was 5.12 per cent; in the second period, under the annual tax, the rate was 5.54 per cent;

[1] The receipts from the annual tax were much less than they would have been had the tax continued in operation for several years. Various methods of postponing payment were adopted, because of the general feeling that the tax would be repealed before the end of its first year.

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in the third period, under the recording tax, the rate was 5.15 per cent. The obvious conclusion from these figures is, that the adoption of the mortgage-recording tax placed the rate of interest at the figure at which it would stand were mortgages exempt from taxation.

The chief criticism of the New York recording tax law has been identical with the last of the criticisms of the Alabama law, mentioned above: namely, that the tax ought to be proportioned to the life of the mortgage. The practical difficulties in the way of achieving this result have up to the present time prevented the attempt.

In Minnesota a mortgage-recording tax was enacted by chapter 328 of the Acts of 1907, under a constitutional amendment, adopted in 1906, which permitted the classification of property for taxation. The act is closely modeled on the New York law, although it is much less elaborate. The rate of the tax is the same, fifty cents on each $100 of indebtedness; but the law does not apply to mortgages taken in good faith by persons or corporations whose personalty is exempt from taxation, or whose property is taxed upon the basis of gross earnings or according to some similar method of computation in lieu of other taxes. The payment of the tax exempts the mortgages from other taxation, except as the mortgage credits may figure as assets of estates taxable under the inheritance tax or as assets of banks and trust companies. The proceeds of the tax are distributed to the local units where the land covered by the mortgage is situated, neither state nor county receiving any part of the proceeds.

The receipts from the Minnesota mortgage-recording tax from April 30, 1908 to September 30, 1908, were $116,515.15; from April 30, 1907 to April 30, 1908, $305,999.60; a total of $422,514.75 for the first seventeen months of the operation of the act. During the three years 1905, 1906 and 1907 the average annual assessment of mortgages, book credits, unsecured notes and miscellaneous credits was $11,835,281, and the average rate of taxation for all purposes was $2.59 on each $100. The annual receipts from this class of property during the three years prior to the introduction of the present system

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therefore averaged $306,534. During 1908 the assessment of this class of property, which now excludes mortgages upon which the recording tax has been paid, was $9,167,710, upon which the tax receipts, at the average rate of taxation ($2.60 per $100) were $238,124; and during the same period the mortgage-recording tax, as we have seen, yielded $305,999.

It has been stated by Hon. Frank Clague,[1] of the Minnesota Senate, that the recording tax has reduced rates of interest from one-half of one per cent to two per cent in different localities, and he cites his home community as an example. No examination into Minnesota interest rates has been attempted except through inquiries addressed by the tax commission to county officers. These inquiries brought out a general opinion that no change had resulted; although one county declared that there had been a decline of one to two per cent, and two other counties reported some lowering of the rate. Similar inquiries as to the local sentiment toward the law showed that in 38 counties the law seems to be regarded with favor, in 31 counties it is disliked, in eight counties the sentiment is divided, and in the remaining eight counties no report was made. In many instances it was stated that bankers oppose the law, because it takes from them many trusteeships which individuals now assume, since they no longer fear the mortgage tax.

The Minnesota tax commission reports that the chief criticisms upon the act are that it does not graduate the tax according to the life of the mortgage, and that it fails to place a usury penalty upon the mortgagee who forces the mortgagor to pay the tax. There is also a general opinion, which the tax commission approved, that the receipts from the tax should be retained by the counties rather than apportioned to the smaller units. The chief criticisms, it will be noticed, are the same in Minnesota as in Alabama and in New York. The Minnesota tax commission disposed of them by pointing out that a scheme of graduating the tax according to the life of the mortgage would interfere with the simplicity of the law without resulting in material benefit, and would be inconsistent with the

[1] State and Local Taxation, vol. 1, p. 346.

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theory on which the tax was upheld by the supreme court of the state,[1] namely, that the payment of the money required by the act is not a tax, but a registration fee for the privilege of employing the machinery of the recording office; and by demonstrating that usury laws never have been effective and from their nature never can be.

The general argument for the mortgage-recording tax resolves itself into two propositions: (1) the attempt to tax mortgage credits as property should cease; (2) the mortgage recording tax is a desirable substitute.

Upon the first of these propositions little need be said in this paper. The theoretical double-taxation argument is perhaps fairly met by the practical demand for the taxation of mortgage investors for the benefit of their home communities; for double taxation is not, of itself, always and under all circumstances inexcusable. But all arguments for the taxation of mortgages at full local rates are more than counterbalanced by the hard fact that in the long run the exaction fails to hit the person at whom it is aimed. The desire to tax individuals, which leads in other nations to the income tax, clashes with the long established American system of property taxation. The incentive to shift the tax is very strong; not only does the mortgagee share the universal desire to escape taxation, but he objects with special reason to a tax which leaves him only two or three per cent of income at a time when other investments yield a net return at least twice as great. Ready at hand are the means of avoiding this complication, by concealing the mortgage or by shifting the burden of the tax.

Arguing from the urgency of the motive and the availability of the means for shifting the tax, economists have sometimes stated that a tax on mortgage credits will in the long run be shifted from the owner of the mortgage except in scattering cases of overscrupulous or unusually unfortunate mortgagees. The data presented by Professor Plehn of California[2] and by the New York Tax Reform Association[3] seem to bear this out. The

[1] Mutual Benefit Insurance Company *v.* Martin County, 104 Minn. 179.

[2] "Taxation of Money and Credits." *Yale Review*, May, 1899.

[3] Mortgage Taxation and Interest Rates (1906).

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careful investigation conducted by Professor T. S. Adams of the University of Wisconsin for the tax commission of that state seems, however, to qualify the theory, at least for rural regions with a low tax rate and reasonable stability of land values. In such cases, mortgagees will often make no effort to evade taxation, because of their inclination toward investing in their own neighborhood. A really low tax rate in a modern community is, however, a rarity.

The advocates of mortgage taxation sometimes make the captivating suggestion that, if all mortgages were taxed, the increase of assessed valuations would be so great that the rate of taxation would diminish. But experience fails to sustain this theory. Appropriations and valuations tend to rise together. In the report of the Michigan tax commission for the two years ending with 1904, it is stated that in the five years since the creation of the commission the assessment of real estate had increased 43 per cent and that of personal property 144 per cent; but so great had been the growth of appropriations that the application of the tax levy of 1904 to the tax list of 1899 would have given a rate of $2.67 per $1000 instead of the actual rate for 1899 of $2.23; or, stating it differently, the application of the tax levy of 1899 to the tax list of 1904 would have given a rate of $1.41 per $100 instead of the actual rate for 1904 of $1.69. To avoid a similar result in Kansas and in West Virginia, it was found necessary, when assessments had been increased by effective state supervision of taxation, to limit the tax rate; but the limiting of the tax rate is always unsatisfactory. Where mortgages and other credits are classified together for taxation at a specially low rate, as in Maryland and Pennsylvania, the same result is reached as if the general tax rate were low. This plan is undoubtedly growing in favor, if one may judge from the reports of recent special tax commissions.

Other arguments have been advanced for the exemption of mortgages from taxation as personal property; but the chief argument is the administrative difficulty of enforcing the tax. President Hadley has well put the situation in the following words:

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A tax which aims to be equal, but is ineffectual, produces a kind of inequality, tending to increase as time goes on, and worse than all other kinds; but a tax which aims to be effective, even in apparent disregard of equality, tends by a constant process of economic adjustment to be more and more equal.[1]

The economic theorist is not content to urge the exemption of mortgages alone from taxation; he usually advocates the abandonment of all taxation of rights and credits. The practical legislator betrays an inclination, where the constitution of his state permits discrimination, to consider as separate questions the exemption of the various classes of intangible property, and he seeks to compensate for the loss of revenue caused by the exemption of any class. The mortgage-recording tax serves to fill the gap which results from the exemption of mortgages. The tax is more properly to be called a fee for the special privilege which the state grants by its registration laws. Both mortgagee and mortgageor are protected by the recording system, and the state may well demand a recompense.

In what respect does a mortgage-recording tax prove a satisfactory substitute for the attempted taxation of mortgage credits? In the first place, the experience of Minnesota and New York seem to indicate that interest rates, as far as they are affected at all, will be lowered. Irrespective of the interest rates, money will certainly be more freely offered for investment in mortgages. Aside from all other considerations, many investors now hesitate to lend on mortgages because of an honest dislike of the subterfuges necessary to avoid confiscation of income.

The debtor is not seriously burdened by the tax. It must be accepted as inevitable that the debtor will pay the recording fee, even when the law attempts to impose its payment upon the lender but the exaction is by no means grievous. The average mortgage is smaller in amount than is often realized. Professor Adams states that in Wisconsin the average mortgage is $1193 and the typical mortgage $300 to $325. The Minnesota tax commission's figures show that the average mortgage recorded in that state during the year 1907–08 was

[1] Cited in Judson on Taxation, p. 562.

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about $1300. In Maine, mortgage statistics for the last ten years were compiled by the special tax commission, and it was found that the average mortgage, outside of bond-issue mortgages, was $850. In any one of these three states the recording tax upon the average mortgage, at the usual fifty-cent rate, would be nearer five than ten dollars. In states containing large cities, the average mortgage would probably amount to a larger sum, but the average payment would hardly exceed twenty-five dollars in any case. The average life of a mortgage is variously stated to be from four to seven years. A payment of the amount indicated hardly seems onerous, in view of the value of the protection which is furnished by the registry of deeds. On a five-year mortgage, the cost would be only one-tenth of one per cent a year.

The tax is almost self-administering. The revenue flows in automatically, except for bond-issue mortgages and mortgages on land in more than one jurisdiction. In no case do the administrative details prove troublesome, and the expense of collection is insignificant.

The revenue feature of the tax is highly satisfactory. The figures showing collections in Alabama, New York and Minnesota have been quoted above. In Maine, the special tax commission found that such a tax would have yielded during the last ten years an average annual revenue of $164,000. The proceeds in 1909, at the average rate of taxation, of the tax upon all money at interest, including other forms of credits as well as mortgages, amounted to but $245,000. It should not escape attention that of the proceeds of the mortgage-recording tax a large proportion is derived from bond-issue mortgages, representing in most instances the investment of large amounts of capital. The Maine tax commission's figures show that of the mortgages recorded in that state three-fourths in amount are of this class; and it is reasonable to believe that a large proportion of the mortgages in other states are of the same sort. In such cases, the tax would be paid as one of the expenses of financing the project, and would be shared by a class of persons presumably well able to endure the exaction. The scope of the mortgage-recording tax includes mortgages

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of all kinds, representing the investment of both home and foreign capital.

In those states which still impose a direct state tax upon all property in the state, real and personal, the substitution of a mortgage-recording tax for the taxation of mortgages would of course reduce the proceeds of the state tax if the rate remained unchanged. This reduction, however, would enure to the benefit of the very communities which would lose the item of mortgage credits from their tax rolls, and this would in some degree compensate them for their loss of revenue. How far this loss would be further compensated by the proceeds of the mortgage-recording tax itself would of course depend upon the disposition of the revenue. If the entire sum should be retained by the county, as was recommended by the Maine tax commission, the towns would be benefited in proportion to their valuation by the corresponding reduction of the county tax. In Minnesota, the benefit to the towns is even greater, since the proceeds of the tax are apportioned to the towns where mortgaged land is located. In New York and Alabama the revenue from the tax is divided between the state and the counties.

The chief criticisms upon the mortgage-recording tax have already been mentioned in our examination of the laws of Alabama, New York and Minnesota. The most far-reaching are these: that the tax imposes a burden on the borrowers of money, and that it is unjust that the tax should be the same, on a mortgage of given amount, whether the life of the mortgage is long or short. The first of these criticisms is entirely valid. The advocates of the recording tax can only answer that the burden is so light that the borrower has little ground for complaint. It is a flaw in a tax system that it imposes any obstacle in the way of the investing of capital in any productive manner. When the perfect tax system is found, such objections will be met. Our present plans can only hope to approximate the ideal. The recording tax is as slight an impediment to the free interchange of capital as could well be devised.

The complaint about the single rate for all mortgages may be met in much the same way. One-half of one per cent is not a grievous exaction even upon a three-months' mortgage; and

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upon the average mortgage the payment, if apportioned to the time for which the mortgage runs, would amount to but one-fifth of that rate annually. It may be asked: Is it not possible to meet this complaint by some modification of the rate? Would it not be possible, for instance, to provide for the payment of an especially small recording tax on unusually short-term mortgages, on condition that the mortgage contain an agreement that the lien shall be limited in duration to the period for which the tax is paid? Some such arrangement might possibly be practicable; but the difficulties are obvious. It has so long been recognized that short-time mortgages may actually continue as liens for many years, that any attempt to introduce new forms of mortgage would work confusion and entail litigation. And the tax, thus modified, would cease to be self-administering. A periodical examination of outstanding mortgages in order to determine whether any further tax should be paid upon them would be a serious burden upon the state administration.

The constitutionality of the mortgage-recording tax remains to be considered. In none of the states which have adopted the tax has it been declared unconstitutional. In New York the question does not seem to have arisen; probably because the New York constitution has no taxation clauses. In Alabama the law was declared to be constitutional in Barnes *v.* Moragne.[1] In this case the court held that the exemption from the *ad valorem* tax of mortgages secured by recorded instruments must extend also to "all moneyed capital, that is, money lent, solvent credits, and other credits of value"; otherwise there would be an arbitrary and unjust classification. The Alabama constitution provides that the property of associations, individuals and corporations shall be taxed at the same rate, and that all taxes assessed upon property shall be assessed in exact proportion to its value; but it contains no clause prescribing uniformity of taxation, nor any clause forbidding exemptions from taxation.

The Minnesota mortgage-recording tax was declared to be constitutional in Mutual Benefit Insurance Company *v.* Martin

[1] 145 Ala. 313.

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County.[1] The court held that this tax was a proper payment to exact for the privilege of spreading a mortgage upon the records, and that the classification of real-estate mortgages for exemption from *ad valorem* taxation was justifiable. The court said:

> Experience has shown that it is very difficult, if not impossible, to fairly and successfully tax this kind of property [real-estate mortgages] under the system ordinarily applied to personal property. This practical difficulty alone furnishes a basis for a classification and justifies the legislature in devising a special method for the taxation of the subjects of that class. . . . A registration tax, . . . in the judgment of the legislature, is preferable to the certain uncertainties of the old system.

The Minnesota constitution contains a clause requiring taxation to be uniform upon all subjects of the same class.

The mortgage-recording tax passed by the Kansas legislature of 1909, modeled on the New York and Minnesota acts, was vetoed by the governor chiefly on the ground of its unconstitutionality. The Kansas constitution has a clause to the effect that the legislature shall provide a uniform and equal rate of assessment and taxation, and the constitution prescribes certain exemptions, without, however, expressly prohibiting others. In the opinion of the governor, the act was prohibited by the clause prescribing uniformity. The governor also opposed the law, it may be noted, on the general ground that an exemption of mortgage credits from *ad valorem* taxation would be a step away from that ideal condition where all property is taxed.

An examination of the constitutions of the remaining states in the Union seems to show that in only six of the thirty states which now attempt to enforce an *ad valorem* tax on mortgages (Iowa, Maine, Michigan, New Hampshire, Rhode Island and Vermont), would it be constitutional to substitute a mortgage-recording tax for the personal property tax. In most of the other twenty-four states, the constitution specifies the allowable exemptions from taxation; in many of them there is the same clause requiring uniformity which is found in the Kansas constitution.

[1] 104 Minn. 179; 116 N. W. 572.

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In thirteen other states, as has been shown earlier in this article, there is either the exemption of mortgage credits from taxation or the taxation of such credits at a low rate. In any of these thirteen states it would probably be constitutional to enact a mortgage-recording tax; but such a law would generally be considered a step backward.

With the state constitutions as they are, the next mortgage-recording tax law may be expected either in Iowa, Maine, Michigan, New Hampshire, Rhode Island or Vermont. In Maine the proposition was advanced by the special tax commission of 1908 but was rejected by the legislature. In Iowa and in some of the other states mentioned there has been agitation in favor of such a tax. Constitutional amendment is a difficult task, but the repeal of constitutional restrictions on taxation is now being urged in many states and by many influences. As fast as this agitation secures its object, we may expect to see the mortgage-recording tax proposed in jurisdictions where the constitution now obstructs the way.

Our conclusion must be, that the mortgage-recording tax is no panacea for the evils of *ad valorem* taxation of mortgage credits; but that it is a substitute of great administrative efficacy and of fiscal merit, which may well receive general support as a compromise measure in those jurisdictions where its substitution for *ad valorem* taxation would be constitutional. If in any of the states where mortgages are now exempt from taxation, agitation arises for the discontinuance of the exemption, the mortgage-recording tax may well be urged as a back-fire, to check unscientific ardor for the taxation of all intangible property. If any of the states which are tied by their constitutions to the general property tax succeed in loosening the bonds, and if it is found that the exemption of mortgages, or their taxation at a low rate, is impracticable, the mortgage-recording tax may be brought forward. As an administrative and financial measure, the tax is a success; but that it involves any fundamental reform, to be supported as a scientific solution of existing evils, is probably more than the most earnest advocate of this tax would undertake to maintain.

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AGRARIAN CHANGES IN THE MIDDLE WEST

THE fundamental problem in American economics always has been that of the distribution of land. The wild continent which stretched before the earliest colonists was a constant inducement to venturesome Americans to seek in it unique adventure and possible fortune. The frontier acted a double part in the development of American civilization: it persistently drew from the older communities the most virile life, and it encouraged the growth of new settlements with differing wants and peculiar social experiences. Land has been so abundant in America that it has induced a national prodigality in its use. The Atlantic States from the very beginnings of their existence suffered from a ceaseless removal of population. New lands could be more easily cleared and occupied than older lands could be fertilized, and the first appearance of soil exhaustion prompted the agriculturist to remove westward. The same course characterized the South upon the rise of cotton culture. The stability of southern social institutions was destroyed: not only the younger members of the families but the southern people as a whole gradually became migratory, bent upon occupying richer fields farther west. Land in America was deemed inexhaustible in quantity; the more desirable lands alone were preëmpted; and in every state could be found large tracts which man had made no effort to cultivate.

Within the past twenty years, however, the more discerning have been impressed with the fact that the newer lands would soon be entirely occupied, and that the less desirable tracts must then of necessity be developed, if American agriculture should continue to be of primal importance. The processes by which the waste lands have been redeemed are most interesting in themselves and have resulted in social consequences of the greatest interest. The Middle West has been experiencing during the past score of years an agrarian revolution, which has resulted immediately from the redemption of its waste lands and the consequent shifting of population and of land

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values. That the national government believed the improvement of inland waterways to be worthy of investigation by a congressional commission and that numerous states of the Mississippi Valley have been contemplating the broadening and deepening of the small rivers and creeks in this section are facts intimately related to the revolution; for one of the chief factors in promoting the revolution of agrarian affairs in the Middle West has been the changed character of the inland waterways. The pioneers of this region were attracted by the river fronts as desirable sites for their permanent homes quite as much as were the original immigrants to Virginia by the advantages of the tidewater farms and as were the Dutch and English colonists by estates which bordered either on the ocean or upon the navigable rivers of the northern Atlantic coast. In the beginning of the occupation of the Mississippi Valley, the rivers which flowed westward and emptied into the Mississippi were the preferred highways. It was soon realized that New Orleans was the natural market for the products of this great agricultural belt.[1] A single journey across the mountains to the colonies to the eastward was significantly toilsome and arduous as contrasted with an easy navigation to the equally advantageous market at the mouth of the Mississippi. The settlers were therefore prompt to realize the importance of owning estates which bordered upon some navigable stream, even though the navigability was limited to flatboats or rude rafts built of merchantable timber. The location of the pioneer homes upon the banks of navigable rivers and creeks was of added advantage in that these locations were or could easily be made healthful. The currents of the streams eliminated the dangers of miasma and fever and afforded easy drainage for the numerous swamps and stagnant pools. If the pioneers settled at a distance from streams they were careful to choose locations which were watered by springs. Artificial wells were seldom constructed, and the people and their livestock alike were dependent upon the natural springs and watercourses for their

[1] Jefferson to Livingston, April 18, 1802; Jefferson's Works (Washington ed.), vol. iv, p. 432. Hamilton to Jay, May 6, 1794; Writings of Hamilton (Constitutional ed.), vol. v, p. 127.

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water supplies. The highland farms upon which springs were located also afforded marked advantages in their freedom from the recurrent fevers and the numerous insect pests which were generated and propagated by the stagnant pools. And both the river-front farms and those which were situated upon high land on which were running streams or springs were easily cultivable and required practically no artificial drainage.

The early settlers were governed by the highest good sense in thus choosing their homes. It mattered little to them that the highland farms were usually of clay and not generally productive. The abundance of land made up for the poorness of the soil; and the settlers preferred to clear a greater number of acres than to attempt to drain the better lands which lay lower, and which were either subject to incessant overflow or were never entirely free from swamps. Every early town and homestead of the Middle West was located with regard to these three primary principles of economy: the little artificial drainage required by the river front and the high clay lands to render them cultivable; the elimination of the danger of fevers and other diseases induced by the prairies; and the advantages which were afforded to the farms located along navigable streams in marketing their produce with the least cost of transportation.[1]

The uplands, which were immediately preëmpted by the pioneers, were generally heavily timbered. The first work of the immigrant was to cut the timber and burn it. The land was cultivated between the stumps, and the most arduous labor was necessary to render the farms clear and easily cultivable. The settlers did not realize that it would require much less exertion to establish artificial drainage for the prairies than to clear the wooded lands, nor did they appreciate the double advantage of securing an inexhaustible soil and at the same time conserving the forests until the period should arrive when the lumber could be marketed profitably. From the point of view of pioneer life, timber was not a commodity which would warrant conservation. Its abundance caused it to be regarded

[1] McCulloch, Men and Measures of Half a Century, p. 41. Roosevelt, The Winning of the West, vol. i, p. 40.

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as an encumbrance rather than as an augmentation of real-estate values. The most thrifty of the pioneers viewed the destruction of extensive tracts of timber simply as an incident to the cultivation of the preferred lands.

The agrarian occupation of the Middle West naturally divides itself into three periods. The first, which extends from the beginnings of immigration to about the year 1835, is of significance chiefly because of the type of immigrants who preëmpted the soil and the nature of their occupancy. The second period, extending from 1835 to 1890, had as its chief objective the enrichment of the group life. It was the period in which large houses and commodious barns were erected, and in which the church and the school were the centres of social activity. The third period, which began about the year 1890, and which is not yet complete, is marked by a transition from the era of resident proprietors of the land to that of non-resident proprietors, and by the fact that the chief attention of the landowners is paid to the improvement of the soil by fertilization and drainage and to the increasing of facilities for communication and for the marketing of farm products.[1]

One of the most significant facts to be observed during the period of settlement is that a careful line of demarcation was drawn between the uplands and the river-front lands on the one hand, and the great stretches of prairie on the other. The annals of pioneer times inform us of the invariable experience of different families which went west for permanent settlement. They mention the tall grass of the prairies through which the wagons and stock of the immigrants could pass only with difficulty, the occasional poor settler who attempted to eke out a livelihood upon this supposedly worthless soil, and the final choice of a habitation in some section of the country which is now demonstrated to have been only of secondary agricultural value.[2] During the second period of the agrarian development

[1] Ross, "The Agrarian Revolution in the Middle West"; *North American Review*, September, 1909, p. 376. In this essay the periods of agrarian development of this region are thoroughly discussed.

[2] Autobiography of James B. Finley, p. 105. Autobiography of Peter Cartwright, p. 246.

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of this region, the better residences which were built were almost exclusively located along the rivers or upon the higher lands. The gradual rise in the value of agricultural lands during this period was limited to holdings of this description. An examination of the deed records of any representative county in the Middle West will afford convincing evidence that the lands which were enhancing in value from 1835 to 1890 were the preferred lands of the early settlers. They gradually rose in price from the time they were entered until, by the close of this second period, they were of an approximate value of seventy-five dollars an acre. The more fertile prairie lands during the same period advanced to possibly thirty-five dollars an acre. It is a very patent fact to every observer of rural conditions in the Middle West that, as late as 1888, large tracts of prairie in Illinois, Indiana and Iowa were without fences, no attempt having been made to improve or to cultivate them. Up to that time they had been utilized solely for common pasturage by the neighborhood.

With the beginning of the third period of the economic development of the Middle West a decided change became apparent. During the second period, as soon as the river bottoms and uplands had been preëmpted, the families which were so unfortunate as to have failed to obtain such preferred tracts for residences removed farther west and sought in newer regions the advantages of which they were deprived in the Middle West. But as the Farther West was rapidly populated, it was seen to be necessary to attempt to utilize the prairies and lowlands of the Mississippi Valley. For this purpose it was essential to devise plans for artificial drainage. Bills were introduced in the different state assemblies to make it possible to establish by judicial process large artificial drains, sometimes within the limits of a single county, sometimes extending over a fourth part of a given state. These plans at first met with discouragement and with much popular opposition; but their supporters were persistent and finally attained the results which they had long sought. The statutes of most of the states of the Middle West now render it possible to establish drainage for any section, upon the broad grounds that such drainage will improve

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the public health, that it will promote the public welfare or that it will be of public utility. The earlier statutes required that, in each instance where a public drain was sought to be established, the special benefits to the persons assessed for its construction should be equal to their assessments. The later statutes place the social importance of the proposed improvement above the inconvenience or expense to any individual.[1]

The drainage statutes became numerous during the last decade of the nineteenth century. Great drains were constructed, some of which were of such magnitude that they were popularly designated as rivers; lateral drains were established reaching for miles into the surrounding region; and every congressional section was given an outlet for its surplus water. Then there occurred an upheaval in land values. The river bottom lands and the high clay farms had been enhancing in value gradually for from sixty to seventy-five years. These lands continued to advance in price, but not so rapidly as during the preceding third of a century. But the prairie lands, the worthless lands of the earlier periods, doubled and trebled in value. A tract which in 1890 had a possible merchantable value of five or ten dollars an acre was worth twenty-five dollars an acre four years later; in 1900 it could be disposed of easily for fifty dollars an acre; and in 1905 offers of a hundred and a hundred and fifty dollars an acre were refused by the owners. Wherever artificial drains were established, the prairie land multiplied in value[2];

[1] The theory of drainage is still confused, though the tendency of legislation as well as of judicial construction is toward an emphasis on the social importance of drainage projects. The law of Indiana is typical of all the states in this region. In this state it has been decided that there must be a positive finding by the drainage commissioners and by the court that the proposed drain will improve the public health, benefit a public highway or be of public utility; otherwise the drain cannot be constructed. Neff *v.* Reed, 98 Ind. 341; Bass *v.* Elliott, 105 Ind. 517.

[2] A few instances will illustrate the extent and rapidity of the increase of values. One farm in northern Indiana, which was with difficulty disposed of in 1893 for fifteen dollars an acre, was sold in 1898 for fifty dollars an acre, and in 1902 the present owner refused one hundred and ten dollars an acre for it. The buildings remained without particular improvement throughout this entire period. Another tract of one thousand acres in the same state and in an adjoining county was purchased in 1893 for twenty thousand dollars. The progressive owner mortgaged the land for half its original cost and expended the entire amount thus secured in tiling

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but wherever the neighborhood conservatism refused to take advantage of the drainage statutes, the prairie land remained economically worthless.

Another significant phenomenon of the agrarian revolution in the Middle West is the retrogressive immigration which is taking place. From the first settlement of this region down to the close of the second period of its development, or approximately to the year 1890, immigration was from the east westward. The hardy spirits who migrated from New England, Pennsylvania and Virginia settled first in Ohio and eastern Kentucky. A few of the more restless or less successful of these settlers drifted to western Kentucky, Indiana and Michigan. After a further sifting, there was an exodus of individuals or families to Illinois and Wisconsin; and finally the lands west of the Mississippi were preëmpted. With each decade, the frontier was pushed westward from twenty to fifty miles.[1] But with the recent development of artificial drainage and the consequent enhancement of land values, the course of migration has been reversed: it is moving from the west eastward. Simultaneously with the rise of farm values in Illinois and with the adoption of extensive arrangements for the artificial drainage of the lowlands of that state, there was an emigration of Illinois farmers to the counties and states farther east—an emigration

the tract and in connecting his lines of tile with the great open drains. In 1898 he disposed of it for double his entire expenditure. The land is now worth at least one hundred and twenty dollars an acre. In Illinois a tract of land comprising the greater part of a township was common pasturage in 1888. It was offered for sale at an insignificant price, and no purchaser could be obtained. At present this tract is under cultivation and has an estimated value of one hundred and fifty dollars an acre. The instances here cited are not exceptional. The average prairie farm of the Middle West in 1890 was worth from five to thirty dollars an acre; in 1905 the same land was capable of being sold at from one hundred and fifty to two hundred dollars an acre.

[1] "Our population is rolling towards the shores of the Pacific, with an impetus greater than what we realize. It is one of those forward movements which leaves anticipation behind. In the period of thirty-two years which have elapsed since I took my seat in the other House, the Indian frontier has receded a thousand miles to the West." John C. Calhoun in U. S. Senate in 1843; cited by Benton, Thirty Years' View, vol. ii, p. 472. Calhoun's comment is interesting. But the actual occupation of the land by resident cultivators did not proceed so rapidly. The estimate I have made I believe to be approximately correct.

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of families which had disposed of their holdings at enhanced prices and sought to invest the proceeds in cheaper lands. The central counties of Illinois first experienced an appreciation of land values; and accompanying this rise in values there began a gradual movement of rural population eastward. The Indiana line was soon reached; but the economic readjustment recognized no artificial barriers such as state boundaries. Western Indiana farm land leaped in value: thirty-dollar land doubled in a single year: within half a decade it had doubled again. It was a matter of common remark that, in two adjoining counties, the one situated to the westward would experience this enhancement in the price of agricultural lands two or three years before the more easterly county would be affected. Far-seeing men quickly disposed of their holdings and hastened to purchase in sections which the revolution had not as yet reached. Moderate fortunes were accumulated within ten years by a few judicious purchases of lands in the beginning of this enhancement of values and by their subsequent sale when the high tide of the revolution had been attained.

This retrogressive immigration is significant, not only because of its territorial course, but also because of the character of the immigrants. The immigration is composed of actual occupants of the land, and it is a family, as distinguished from an individual, immigration. Few if any companies have been formed for land speculation. The individual farmer has found an opportunity to dispose of his holdings at a very high price, and he has taken advantage of it. He then seeks a new home farther east. Sometimes he purchases where his old neighbors have obtained new homes, but more frequently the adventurous spirit, which a century earlier impelled his ancestors to advance to the western frontier, impels him to seek his new location far to the east and among strangers. By pursuing this course he is able to purchase a farm at a minimum price.

These immigrants are not of the wealthier rural classes. The wealthier of the present landowners of the rural sections of the Middle West are much more disposed to purchase the tracts of their neighbors, even at an enhanced price, than to dispose of their own properties. They do not yet appreciate

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the opportunities for investment which the cities afford, and they invest their wealth exclusively in farm lands. The process of centralization which is now taking place in this section is resulting in the accumulation of large landed estates in the hands of a few persons who originally were resident farmers. And when the opportunities for local landed investments become less, these wealthier landowners retain their residences in the cities to which they have removed and invest their surplus capital in the unimproved lands of the Southwest. The retrogressive immigrants of the Middle West are generally small landowners. Their present possessions are too straitened to afford comfortable subsistence for them and their growing families. They cannot purchase adjacent tracts except at exorbitant prices, but they are able to take advantage of these enhanced prices in disposing of their lands, and the means so obtained enable them to purchase elsewhere larger farms quite as fertile as those which they have sold.

Then, too, the retrogressive immigration is attended by none of the deprivations which have always been associated with removal to the frontier; for the towns and cities farther eastward, near which the new residence is secured, are often more attractive than were those of the old homes, and the disposition of the new neighbors is often more social. So the typical retrogressive immigrant is one who was a small farmer farther west, and who has been compelled to remove because of his small holdings and the impossibility of purchasing adjacent lands. After the sale of his farm, his wealth consists of from five thousand to ten thousand dollars in cash, in addition to his livestock and farming utensils. Occasionally a retrogressive immigrant may have but one or two thousand dollars, and in some instances he may have as much as twenty thousand. Both of these extremes, however, are exceptional.

The mercantile conception of rural possessions which is fast becoming dominant in the Middle West may be attributed largely to these newcomers. Their motive in removing to the new neighborhoods is strictly economic: it is the desire to obtain larger farms. And having made one remove to advantage, they are eager to sell a second time, when the values of

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their new holdings have increased, and again to migrate still further to the eastward. They infect the old established communities in which they have first purchased with a desire to imitate their course, and many of the small farmers of these communities join the eastward trend. The presence of these immigrants in any neighborhood, together with that of the increasing number of tenants on the larger farms, affects the stability of rural society. Their varied experiences and successful ventures are matters of common gossip in the neighborhood in which they may reside for a few years, and the more inert of the smaller proprietors at last become willing to dispose of their homesteads and in turn to join the eastward migration. The lands which they desire to dispose of are sold to the wealthy landowners who are becoming non-resident proprietors, and the places of the freehold residents of the community are taken by tenants of the growing commercial type. The deed records afford indisputable evidence of this tendency. Farms which from the original entry until 1890 had been owned by the same family, or which had changed owners but once or twice, and whose owners were proud to assert that their broad acres had never been encumbered with mortgages, since 1890 have been sold, in some instances as often as ten times, in more numerous instances four or five times, and a large part of the purchase price is secured by encumbering the estates.

This movement has been closely watched by the practical men of business in the Middle West, though as yet it has not attracted the attention of theorists and scholars. The philosophy of the man of business is not concerned with ultimate causes. The rise of land values in Indiana is explained by the fact that the Illinois farmers are disposing of their holdings and moving eastward, and in Ohio there is constant reference to the influx of Indiana farmers. But the reason of this peculiar retrogressive immigration is not a matter with which the practical mind is greatly concerned. It is sufficient for the landowner to know that within a few years, through no exertion of his own, his competence has become a fortune. And the speculative purchaser has discovered that, with each additional remove eastward, his foresight has been rewarded by an appreciable increase in the value of his possessions.

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In the preceding pages the chief economic causes of the agrarian revolution in the Middle West have been indicated. The utilization of the prairies, made possible by artificial drainage, the enhancement of land values in the narrower Mississippi Valley, the retrogressive immigration of the rural inhabitants and the enhancement of land values simultaneously with the movement of rural population—these phenomena have everywhere been manifest. All land values have risen; but the rise has been especially marked in the case of the prairie lands. So long as the movement of population was westward, the prairies were avoided as places of residence; while now the rural immigrant, if he can be called such, will be satisfied only with the prairie, with its rich black loam and inexhaustible soil. The river bottom farms and the clay lands of the hills, which in an earlier time were esteemed of greatest intrinsic worth, are now purchased only when the more desirable prairie farms cannot be procured.

There is, however, another consequence of the present tendency to improve the low swamp lands of the Middle West that cannot but be of increasing importance. Before public measures were adopted for the complete drainage of these lands, few attempted to cultivate them, because, whenever there was an excessive rainfall, the water would accumulate in the low ground and disappear only by the slow process of evaporation or by an almost equally slow percolation through the soil. The artificial systems of drainage, which have resulted in such decided advantage to the prairies, have made use of the numerous creeks and dry runs which may be found in most of the counties in the Mississippi Valley. The drains empty into the creeks and runs, and these in turn empty into the rivers. By means of the outlets thus afforded, lands which previously had suffered for several days or even for a fortnight from the water which accumulated after a rain are now cleared of the surplus water in from twenty-four to forty-eight hours. In this comparatively short period of inundation, planted crops are not seriously injured. But this system of drainage, which has meant so much for the prairies, threatens the utter destruction of the lands which border upon the rivers and creeks. In previous times,

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the water which accumulated after the excessive spring rains would percolate slowly through the soil and would not disappear in less than a fortnight. The small portion which reached the creeks and rivers caused no unexpected and excessive overflows. After continuous rains there would be a gradual rise of the river, after which there would be a speedy subsidence. Now, however, when the accumulated rainfall is gathered in tile drains from every farm and poured in ever growing streams into the creeks, and these in turn gush in torrents into the rivers, the latter, which until 1890 had a week or a fortnight in which to carry off the surplus rainfall, are now taxed to accomplish the greater task in one or two days. To the lands situated along the banks of the rivers the consequences are appalling. In former times these lands enjoyed the advantages which accrued from successive overflows during the early spring before the annual planting season. Now they are in danger of overflow during the most productive season of the year, if a rain of ten hours' duration should occur. Recently the writer observed a striking instance of this new danger. In 1908, during a rain of less than two days, the Wabash river rose five feet in less than five hours, and the lowlands everywhere were inundated. This sudden rise occurred late in May, in the midst of the planting season, and greatly retarded the cultivation of the lands. Prior to 1890, this river had never risen to such a degree in less than several days. The number and the destructiveness of the annual overflows of the rivers of the Middle West increase with each year. And the changed conditions which now threaten to work permanent injury to lands situated along the rivers and larger creeks, while the measures for public drainage are but half accomplished, will unquestionably ruin these lands for agricultural purposes very shortly unless ameliorative measures shall speedily be adopted. To complicate still further these growing difficulties, the channels of the more navigable streams have become shallow through the gathering of drifts of sand, and great trees have floated upon these sandbars and further obstructed the passage of the water. This is one of the problems which will very shortly become vital in the Middle West, and one which seems to have been overlooked entirely by the federal Inland Waterways Commission.

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From the economic point of view, the present agrarian revolution in the Middle West has been caused by this shifting of land values. Or perhaps, to speak more carefully, one of the most significant phenomena accompanying the agrarian revolution in the Mississippi Valley has been the shifting of land values. The immediate consequences which I have depicted—the growth of large estates, the increasing number of tenant farmers, with precarious and commercial leaseholds, the crowding-out of the small farmers and their compulsory migration to cheaper lands—will undoubtedly have a serious influence upon the character of American institutions. The faith of which the American people have been possessed so abundantly, that the rural personnel was a perpetual safeguard against the dangers which threaten the national existence through the rise of cities and of large industrial undertakings, will soon have lost its substance. Indeed, the process of centralization in the rural communities seems to lack much of the conservatism which the city has naturally generated. In the cities, centralization has been accomplished upon a scale of such magnificence that industrial institutions of national proportions have been formed, and these are naturally conservative. In the process of rural readjustment, as it is being accomplished in the Middle West, centralization clings to the old nucleus of the individual. It lacks scope and is conditioned by all of the fluctuations to which individual plans and preferences are always subjected. The outcome of the present readjustment of agrarian affairs in the Middle West, consequent upon the shifting of population and of land values, must be a matter of great interest. Its importance is of concern, not only to the residents of the section which is the seat of these changes, but to the nation, for the results of the movement may have a decided bearing upon the next form which our national ideals will assume.

JOSEPH B. ROSS.

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A NEGLECTED FACTOR IN RACE SUICIDE

THE mobile character of American society is one of its chief characteristics. The migratory disposition is strong. The force of tradition is slight. A period of five years suffices to work large changes in the membership of churches and of other organizations. West of the Appalachians, there are few ancestral estates in the possession of the third generation. Our historic background is much too brief, and we are too much possessed of the money-making spirit to be firmly rooted in the soil. Of the population born abroad this is, of course, obviously true. Few of the foreign born have been here long enough to form strong local attachments. Many of the native born, however, are as prone to migrate as are the foreign born. More than one-fifth of the total native population residing in the United States live outside of their native state.[1]

The main currents of migration are westward, cityward and from abroad. Since 1790 the center of population has moved westward 519 miles, from a point 23 miles east of Baltimore, Maryland, to a point six miles southeast of Columbus, Indiana.[2] The urban population has much more than kept pace with the growth of the total population. Whereas in 1790 less than one person out of every twenty-five lived in a city of 8000 or more inhabitants, in 1900 more than one person out of every three lived in such a center.[3] And 19,115,221 immigrants have come to our shores since 1820, not counting the arrivals since 1900, which for several years prior to the panic of 1907 amounted to considerably more than 1,000,000 per year.[4]

The purpose of this study is to inquire how these three population movements have affected the distribution of the sexes between the West and the East, between city and country and

[1] Twelfth Census, Population, part i, p. cxxxi.

[2] *Ibid.* p. xxxvi. [3] *Ibid.* p. lxxxiii.

[4] *Ibid.* p. cii; Statistical Abstract of the United States, 1908, p. 706.

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between the United States and other nations; and, secondly, to inquire what limitations they have imposed upon the frequency of marriages and births. The extent to which the differentiation of society into classes segregates the sexes and the consequent effect upon marriages and births will be considered in a third and concluding section.

I

The tendency of modern industrialism to segregate the sexes seldom receives more than casual mention. Most industries prefer one sex or the other. The western movement is a good illustration. The work of the pioneer calls for a spirit of adventure, freedom from inertia, muscular strength and the power of physical endurance. Hence, the first steps toward pushing forward the frontier have usually been taken by men. The gentler sex has followed later. "Go west, young man"—not young woman—has been the injunction. An excess of males on the frontier and an excess of females on the Atlantic slope has been the result. In 1880 the number of females in Texas, Michigan, Minnesota, Kansas and Nebraska ranged from 80 to 90 per cent of the number of males; in Oregon, California, Dakota, Washington and Colorado, from 50 to 80 per cent; and in Wyoming, Nevada, Montana, Arizona and Idaho, the males outnumbered the females more than two to one.[1] This condition was notorious in California during the years following the discovery of gold.

It was estimated that women made up only two per cent of the population of the mining camps and but eight per cent of that of San Francisco. It was said that the chief qualification of an early governor was the presence of his wife and two daughters. Tickets to a wedding sold readily at five dollars each. Miners separated from home would frequently travel miles to see a child and would weep at the sound of its voice. A child born in the diggings received presents of gold dust that would have constituted a modest fortune in the states.[2]

Social conditions contributed to this result. Men encounter

[1] Tenth Census, Population, pp. xxxiv, xxxv.

[2] Sparks, The Expansion of the American People, p. 342.

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less resistance than women in migrating. The care of the aged and of the sick less frequently devolves upon them, and they are less hedged about by the conventionalities of society. It is far more a matter of course for a boy to leave home and strike out for himself than for a girl. "Birds of passage" in modern immigration include few women. Single men, also, can migrate more readily than married men. They are less securely anchored by the ties of affection and need not choose between leaving their families and the added expense of taking them along. Some men, moreover, hesitate to expose those dependent upon them to risks which they would willingly incur on their own account.

As the frontier of the miner yields to that of the farmer, and as the logging camp and the construction gang disappear, women become more and more an industrial as well as a social necessity, and the proportion of males declines. Of first importance is the fact that industrial opportunities for women abound in cities, and, as will presently appear, nothing has contributed so much toward increasing the proportion of women as urban development. Incidentally, the wives and children left behind by some of the early pioneers swell the proportion of females by joining the head of the family. As industrial conditions in the West, therefore, become more like those in the East, the proportions of the sexes in the two sections show less difference. The proportion of males, during 1890–1900, decreased in six of the eleven minor geographical divisions, remained constant in one, and slightly increased in the other four. Only two minor divisions had an excess of females in 1900 as compared with three in 1890.[1]

Two counter movements have probably more than offset this more even distribution of the sexes. The first is the swarming of women to cities. In 1890 there were slightly more males than females in the urban population. Ten years later the females greatly outnumbered the males. In the same decade the proportion of females in the country districts slightly declined. The proportion of females exceeds the proportion of males

[1] Walter F. Willcox, Proportion of the Sexes, Bulletin 14, Bureau of the Census, p. 10.

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in cities of all classes, save only in those with 2500 to 4000 inhabitants, and even in this class the proportion is considerably larger than in the surrounding country districts. The proportion is largest in cities with 8000 to 25,000 inhabitants. In Massachusetts and Rhode Island, the females exceed the males even among the foreign-born white. The distribution of the sexes between city and country in Europe is similar to that in the United States, though in the principal cities of Russia and India the conditions are exactly reversed.[1]

Chief among the causes of the drift of women to cities is the difference between urban and rural pursuits. The former attract females in greater numbers than males, while the latter appeal more exclusively to males. Not merely the pecuniary return but the opportunity to gratify the desire for freedom and the sense of economic independence attract women to cities. Perhaps nothing has done so much in recent years to free woman from some of the fetters of society as the enlargement of her industrial opportunities in the urban development. At any rate, the effect has been to dissociate the sexes and to offset, largely if not altogether, their more even distribution between the East and the West. In one respect the segregation of the sexes is decreasing. In another respect it is growing, especially where the urban population is rapidly increasing. The dissociation of the sexes between city and country corresponds to that between the Atlantic slope and the Central West. The contrast is the same as between New Jersey and Kansas.[2]

To the rule that females predominate in the cities and males in the country there are, however, important exceptions. The needs of the industrial situation at any time and place exercise a controlling influence. The demand for females in southern agriculture, for example, is such that the cotton belt, the black belt, and the counties in which the females outnumber the males roughly coincide. On the other hand, in the urban population required for lumbering, coal mining and iron working, the males outnumber the females.[3] The dissociation of the sexes is, consequently, intensified by the fact that some cities contain an

[1] Willcox, *op. cit.*, pp. 15, 19, 38. [2] *Ibid.* p. 15. [3] *Ibid.* p. 16.

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excess of males. Of the 160 cities with a population of at least 25,000, 59 have more males than females. In 36 cities the proportion of males exceeds that of the states in which these cities are respectively located. Seattle, South Omaha, Portland, Oregon, Superior, Duluth, East St. Louis, Gloucester, Youngstown and McKeesport are among the most noteworthy instances. There are more females than males in the cotton-mill towns of New England, but just the reverse is true in the mining and steel manufacturing centers of Pennsylvania and other states. Of the population of Troy, New York, a collar and cuff manufacturing center, only 46.19 per cent are males, while in the neighboring city of Schenectady, an electrical manufacturing center, the per cent is 53.83.[1] While, therefore, females are in the majority in the larger cities taken as a whole, there is an excess in some and a deficiency in others, and the distribution of the sexes is more uneven than at first sight appears.

A second movement which tends to offset the tendency toward the more even distribution of the sexes between the East and the West is foreign immigration. In marked contrast with many countries in Europe, the males not only outnumber the females in the United States, but the proportion of males is increasing. Migration contributes to the excess of males here and to the excess of females there. Fully three-fifths of all our immigrants are males, and 54.4 per cent of the foreign born belong to the same sex. As a result, the proportion of the foreign born and the proportion of males in the total population vary directly. Excluding the foreign white, the percentage of males in the population is 50.73. Including the foreign white, the percentage is 51.22.[2] This compares with 50.3 per cent in the total enumerated population of the world.[3] Since 1900 the volume of immigration has been unusually large, and the proportion of males among immigrants exceptionally high.[4] For

[1] Willcox, *op. cit.*, pp. 11, 20.

[2] Twelfth Census, Population, part i, p. xciv; Abstract of the Twelfth Census, p. 10. Immigration also contributes to the excess of males in Canada and Australia; *cf.* The Canada Year Book, 1906, p. 2, and Walter F. Willcox, *op. cit.*, p. 10.

[3] Walter F. Willcox, *op. cit.*, p. 10.

[4] Statistical Abstract of the United States, 1905, p. 53.

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these reasons, the proportion of males in the total population has undoubtedly increased in the last ten years. Moreover, the age distribution of the foreign born is another important fact. They belong largely to the age classes in the prime of life, and partly on this account the proportion of males in the total population is greatest among adults. In other words, immigration tends to segregate the sexes chiefly in that portion of the population which is of marriageable age.

The first part of our study leads to the following result: In recent years, the segregating power of the western movement has been waning, while that of the movement cityward and that of immigration have been growing greater. The net effect has probably been to increase the separation of the sexes.

II

Wherever monogamous marriage prevails, the relative scarcity of either sex enforces a certain amount of celibacy upon the other. Here the scarcity of males, there the scarcity of females limits marriages and births. In states where males are in the majority, the proportion of males married is smaller than the proportion of females married, whereas the reverse is true in states where females are in the majority. Ohio, Illinois, Texas and Oregon are fairly representative of the states in which males preponderate; and the proportions of men and women at least fifteen years of age married in Ohio are respectively 56.4 and 57.7 per cent; in Illinois, 54.2 and 57.7 per cent; in Texas, 54.7 and 60.4 per cent, and in Oregon, 46.1 and 61.4 per cent. On the other hand, the proportions for states in which females preponderate are reversed. The proportions of men and women married in Georgia are respectively 57.6 and 56.7 per cent. The figures for Virginia are 53.1 and 52.6 per cent; for New York, 55.1 and 53.6 per cent; and for Massachusetts, 53.8 and 49.8 per cent.[1] Since there are 1,638,321 more males than females in the United States, the proportion of males in states where they preponderate usually exceeds the proportion of females in states where they preponderate. This is true of the

[1] Abstract of Twelfth Census, p. 83.

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two sets of states named. Hence, the opportunities of males in the first set to marry are more restricted than the opportunities of females in the second. This accounts for the fact that the difference in the proportions of the sexes married is greater in the one case than in the other.

A corollary of the foregoing is that foreign-born males intermarry with native-born females more frequently than the reverse, because the deficiency of females among the foreign born is exceptionally large. Of white persons having fathers born in Austria, 4.3 per cent have native-born mothers, whereas of white persons having mothers born in Austria only 1.5 per cent have native-born fathers. The corresponding percentages for those having at least one parent born in Ireland are respectively 12.7 and 7.9; in Germany, 15.4 and 5.9; in England, 23.8 and 14.9; in Sweden, 5.1 and 2.8, and in Italy, 3.1 and 0.4. These figures are without exception typical of other countries. Of 5,089,202 native whites having one parent native-born and the other foreign-born, two-thirds have foreign-born fathers.[1]

A second corollary is that the scarcity of females increases the number of early marriages among women. Of males, 15 to 19 years old, only one per cent is married, as compared with 10.9 per cent of females.[2] While this condition at any time and place is largely controlled by custom, as in the South, where early marriages are especially common, the scarcity of females together with the preference of men for wives younger than themselves is a factor in the problem. In the states of the Western division, the proportion of females under 20 married is generally larger than in the North Atlantic states.[3]

As a result of men taking wives younger than themselves, the effect of an excess of males among adults upon the relative proportion of the sexes married is minimized and sometimes obscured. In the population above 19 years old, for example, the number of married men is considerably in excess of the number of married women, since all married women under 20 are left out of the account. The result is that while the pro-

[1] Twelfth Census, Population, part i, p. cxcii.

[2] *Ibid.* part ii, pp. lxxxvii, lxxxix.

[3] *Ibia.*, pp. 259–307.

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portion of married men among the males of marriageable age is given with substantial accuracy, the proportion of married women among females of marriageable age is not correctly indicated. In the North Atlantic and South Atlantic states there are somewhat more men than women (above 19), and yet the proportion of adult males married in each of these divisions exceeds the proportion of females. Where, however, the excess of males is marked, as in the North Central and especially in the Western division, the effect upon the proportions of the sexes married stands out boldly, in spite of the large number of married women under 20 omitted.[1]

Moreover, in determining the limitations upon marriage of a scarcity of females, the married portion of the population should properly be excluded and the inquiry confined to the single, widowed and divorced, or to those eligible to marry. For the same reason, all persons under marriageable age should be excluded. Excluding those married and all minors under 15 years of age, 53.1 per cent of the remainder of the population are males, as compared with 51.2 per cent of the total population. In other words, the dearth of females is greater among those eligible to marry than in the population as a whole. In the North Central States, the percentage of males among those eligible to marry is 54.6, and in the Western division the eligible males outnumber the eligible females nearly two to one.[2] Strictly speaking, the dearth of eligible females is greater than the figures stated indicate, because of the large number of widows, whose chance to marry is less than that of the spinsters on account of age.[3]

Unequal distribution of the sexes is of a threefold character. There is a large excess of males in the West, due to the westward migration; there is a notable excess of females in cities and of males in the country districts, because of the different demands of urban and rural development; and there is a considerable excess of males in the total population to which foreign immigration contributes. The restriction of marriage

[1] Twelfth Census, pp. lxxxv, lxxxvi.

[2] *Ibid.* part ii, pp. lxxxii, lxxxiii.

[3] Mayo-Smith, Statistics and Sociology, p. 109.

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caused by the last of these inequalities is not only the greatest of the three, but, as already noted,[1] it has measurably increased in recent years. In each of these cases the restraint of marriage is due to one or both of two causes; the friction of distance, and social, racial and international differences. The latter will be considered in the third part of this paper.

First, then, as to the friction of distance. An excess in the matrimonial supply of either sex at any given place does not find its way to places where the supply is deficient with anything like the readiness with which commodities flow to the points at which they are most needed. This is largely because commodities are standardized, and can therefore be sent from the point of excess to the point of deficiency with a fair prospect that they will find takers. A man in Liverpool can readily order a cargo of cotton or wheat from any quarter of the world by sample, with reasonable assurance that he will get what he wants. In the realm of the sentiments, however, the personal equation is decisive. Human affections do not conform to any hard and fast lines, nor are individuals made after any fixed pattern. Hence, one condition essential to a world market in the case of commodities is lacking in the matter of giving and taking in marriage.

Distance interferes more with the circulation of persons than with that of commodities for a second reason. The latter are objective to self, as one's person is not, and can therefore be sent from place to place without interfering seriously with one's comfort or convenience. The trader risks only his fortune in a business venture, while he who marries risks his very self. Moreover, freight rates are relatively much lower than passenger fares. Hence, distance interposes far more resistance to social relations than to trade.

In the third place, marriage is normally the outcome of acquaintanceship, and distance interferes with the sort of acquaintanceship which is likely to ripen into affection. In the arrangement of marriages proximity is far more necessary than in most business transactions. Instances of love at first sight

[1] *Supra*, pp. 642, 643.

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are not uncommon; but most persons in their right minds wish to see and know something more of each other, prior to marriage, than a chance acquaintance reveals; and this usually requires proximity at recurrent intervals. The ruling families of Europe contract international marriages for reasons of state or to avoid marriage with their social inferiors. Foreigners with titles, also, occasionally exchange a certain social status for generous marriage settlements with American heiresses. In general, however, the rule holds that local shortages in the matrimonial supply of either sex are not made good by drawing upon the world at large. In point of fact, the intervention of a third party, so characteristic of the modern bargain counter and so necessary to bring consumer and producer together, seldom figures in the mating of the sexes. Courtship by proxy is next to impossible, as the case of Miles Standish illustrates; and few things are more sure to arouse resentment than proffered aid in a matter that is so purely personal as marriage. Society is much more mobile in gratifying its economic wants than in ministering to its sentiments.

The concentration of the excess of males in the United States in three of the five leading geographical divisions adds force to the preceding reasoning. All but three-tenths of one per cent of the excess is in the South Central, North Central and Western divisions; 82.3 per cent of the excess is in the last two divisions.[1] In many parts of the Western division, the scarcity of women is so great that "men are little more than wall flowers at dances and other social functions." The relative scarcity of women in any country limits the opportunity of men to marry, and the concentration of the excess of men within a portion of the country limits their opportunity still further. In fact, an excess of either sex within a portion of a field limits its opportunity to marry quite aside from the inequality of the sexes within the field as a whole. The sentiments are seldom equal to the task of bringing together the units which economic forces have dispersed.

[1] Twelfth Census, Population, part i, p. xcvi. The distribution of the sexes in Canada is similar to that in the United States. There are 132,101 more males than females in the Dominion, and 81.1 per cent of this excess is found in the western provinces and territories; *cf.* The Canada Year Book, 1906, pp. 2–13.

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An inspection of the age distribution of the population in several western states confirms the preceding analysis. If the excess of males concentrated in certain geographical divisions were chiefly among minors, the effect upon marriage would be almost nil. The reverse, however, is the case. For the development of the West has not only attracted males rather than females, but it has appealed especially to males in the full vigor of life. Accordingly, in Illinois, the males constitute 51.3 per cent of the total population and 52.2 per cent of the portion from 20 to 54 years of age. The corresponding figures for Texas are 51.8 and 53; for Oklahoma, 53.8 and 55.9; for California, 55.3 and 56.8; and for Oregon 56.3 and 58.9. For the United States the corresponding figures are 51.2 and 51.9. In each of the states named the concentration of the excess of males in the age period between 20 to 54 is, therefore, more marked than in the country at large. In three of the states named, moreover, the proportion of males among those under 20 is less than for the entire country, and in Oklahoma and Texas the females in this portion of the population actually outnumber the males.[1] These facts lead unmistakably to two conclusions. First, the excess of males in the United States is more marked in the age class from 20 to 54 than in the total population. Secondly, the concentration of this portion of the male population is especially noteworthy. In other words, the deficiency of females is precisely at the point where, in connection with the friction of distance, it necessarily limits the number of marriages.

Due account should of course be taken of the various acquaintance-promoting forces and agencies which counteract distance. A certain spirit of adventure and the attraction of the unknown prompt many to seek acquaintances outside of their immediate locality and circle of friends. In many instances, the very meagerness of the home supply may put men

[1] Twelfth Census, Population, part ii, pp. 110, 111. In Canada these conditions are even more striking than in the United States. In Manitoba, the males constitute 54.2 per cent of the total population, and 57.4 per cent of the portion in the age class between 20 and 54. The corresponding percentages for British Columbia are 63.8 and 70.9; *cf.* The Canada Year Book, 1906, pp. 4, 5, 18, 19.

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on their mettle and stimulate them to look elsewhere. The agencies which promote acquaintance away from home are many and varied. Annual conclaves, religious or secular, world's fairs and expositions, summer and winter resorts, Chautauquas, attendance at college and at athletic games, the postal service, cheap excursions and travel for business, all perform an acquaintance-promoting function which results in a certain number of marriages as a by-product. By contrast ours is, indeed, a cosmopolitan age. However, the forces and agencies noted entice few far from home. Curiosity and a spirit of adventure are often satisfied a short distance away. With all the improvement in material conditions and in the agencies of transportation, lack of means still limits the long-distance travel of the masses. Most colleges are largely dependent upon local constituencies, and the attendance at world's fairs comes mainly from the region immediately tributary. Many excursions are such rush affairs as to afford little time for acquaintance. Notwithstanding the aid of the mails, relatively few friendships long outlast the separation that usually follows their establishment. New friendships, near enough to be kept up, side-track the old. Of the marriages which result from acquaintances formed away from home, some are contracted between persons from the same locality or from localities in which the proportions of the sexes are the same. Of the remainder, a certain number merely offset each other; for example, a marriage that carries an eastern girl to the West is counterbalanced by a marriage which brings a western girl to the East. The net effect of the agencies which counteract distance in promoting acquaintance is, therefore, less than appears upon the surface.

III

Propinquity is but one of the conditions favorable to marriage. A certain degree of social equality is at least equally important. Modern industrialism has still further segregated the sexes by creating class differences which interfere with social intercourse. Of these differences, three deserve special consideration.

Lines of social cleavage due to differences in industrial and

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economic status have become much sharper during the last two generations. In most country communities, fifty years ago, the hired man was socially so nearly the peer of his employer that he frequently married the daughter of the man for whom he worked. Such marriages have become much less frequent. When land was so abundant that practically every man was the potential if not the actual owner of a farm, one man was as good as another; but as the public domain approached exhaustion and it became increasingly difficult for the landless man to become a landowner, social distinctions arose. In the towns and cities the differences between the employer and the employee class have become even more marked. In town and country alike, however, economic, industrial and cultural differences have widened and deepened until intermarriage is normally quite out of the question. The exceptions in which sentiment bridges the gulf are so rare as to prove the rule. Where class distinctions reach the point that one portion of the community does not feel welcome to attend the church of another portion, the chance for social intercourse on terms of equality is small. Under such conditions, the matrimonial supply for either sex is restricted to the number of the other sex available in the same social class. The limitations are, therefore, greater than the inequality of the sexes within the community as a whole indicates. The economic motive is the great driving power in the evolution of modern society, and in any given class it frequently assembles more of one sex than of the other.

The cleavage line between city and country marks a second class difference. The conventionalities of life are so much more exacting in the city than in the country that the countryman is apt to feel ill at ease with those brought up in the city. The contrast extends to the working hours. In the country a man at work does not hesitate to take off his coat to add to his comfort, while in the city the office force of certain large corporations works with coats on no matter how sweltering the weather. It is not so much distance as social contrasts that keep city and country apart. The term "hayseed" suggests social inferiority. As relatively more of the population has

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drifted cityward, the cleavage line between city and country has hardened and become more important as a social barrier. It is more rigid between the large center and the country than between the small town and the country. The city-bred girl seldom looks for her ideal in the country-bred man, nor does the lot of a farmer's wife usually appeal to her. Thus there is little chance of eligible suitors from the country population for the excess of women in cities. Again, the number of farmers' daughters predisposed to marry city-bred men increases the supply at a point where it is already excessive.

In the third place, immigration deposits the discordant races and nationalities of Europe and of other lands side by side in the United States, and time is necessary to overcome their antipathies to each other and their lack of like-mindedness with the native born. There is a certain correspondence between the demands of the industrial situation at any time and the quality as well as the quantity of immigrants.[1] The sources of immigration have, consequently, shifted as the country has become less exclusively agricultural and more and more industrial, until drafts have been made upon practically every country in Europe and upon many in Asia. Prior to 1890 immigration came chiefly from northern and western Europe, but during the next ten years 50.1 per cent of all immigrants came from southern and eastern Europe.[2] In 1880, 3.9 per cent of the foreign-born population were natives of the second group of countries; in 1890, 8.8 per cent; in 1900, 18 per cent.[3] Since 1900 the proportion has doubtless still further increased. Racial, national and religious feeling as well as industrial and economic differences impede intermarriage between these diverse elements as well as between them and the native born. Immigrants from southern and eastern Europe are more strongly affected by these hindrances than those from northern and western Europe, since the deficiency of females among them is much greater. In the ten years, 1881 to 1890, the proportion of males among immigrants ranged from 51 per

[1] J. R. Commons, Races and Immigrants in America, chapter v.

[2] Twelfth Census, Population, part i, p. cii.

[3] *Ibid.* p. clxxi.

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cent among the Irish and 57.6 per cent among the Germans to 65.8 per cent among the Russians (including the Russian Poles), 73.8 per cent among the Hungarians and 79.4 per cent among the Italians.[1] Moreover, the immigrant population is largely concentrated in the northern states, notably in the larger cities. The purely social barriers above noted further limit the opportunity of the foreign-born males to marry.

Mixed marriages, between either the foreign born and the native born, or between the foreign born of different nationalities, occur most frequently at the point of least resistance. Irish-born males intermarry most frequently with natives of Scotland, English Canada and England, the number of marriages increasing in the order named. German-born males intermarry most frequently with natives of France, Switzerland, England and Ireland; English-born males with natives of Germany, Scotland, English Canada and Ireland; English-Canadian-born males with natives of Scotland, England and Ireland; males born in Sweden with natives of Norway and Germany; and males born in Scotland with natives of English Canada, England and Ireland.[2] These are the principal combinations between the foreign born. While propinquity doubtless contributes to the number of these combinations, the conclusion is unavoidable that community of thought and feeling, associated with a common language and more or less community of traditions, plays an important part. Mixed marriages between the foreign born and the native born are controlled by the same influences. Immigrants from northern and western Europe intermarry more freely with the native born than do immigrants from southern and eastern Europe, as the following comparisons show. Of native white persons with fathers born in Sweden, 5.1 per cent have native mothers. The corresponding figures for those whose fathers were born in Norway are 8.7; in Denmark, 9; in Ireland, 12.7; in Germany, 15.4; in Switzerland, 17.7; in Scotland, 19.4; in Wales, 19.6; and in England, 23.8. These figures compare with 1.68 per cent for those with Russian, 2.2 per cent for those with Polish or Hungarian

[1] Mayo-Smith, *op. cit.*, p. 323.

[2] Twelfth Census, Population, part i, p. cxciii.

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and 3.1 per cent for those with Italian fathers.[1] The wide disparity between these two sets of figures is due mainly to two facts. In the first place, immigrants from the second group of countries are more heavily handicapped by racial, religious and linguistic hindrances than are those from the first group. Secondly, immigration from the first group set in so much earlier than from the second that intermarriage between recent comers and the native-born descendants of the earlier arrivals is possible in the one case as it is not in the other. When the immigrants from southeastern Europe shall have had more time to learn the ways of the country and to solve their economic problems, doubtless relatively more will intermarry with the native born.

Foreign immigration has tended to make good the deficiency of males in the North Atlantic states due to the western movement; but from the matrimonial point of view, the foreign-born males do not take the place left open by the westward migration of the native born. This helps to explain the large number of spinsters in some eastern communities. When it comes to types so divergent as are the Japanese and the Chinese, intermarriages with persons of native white extraction are extremely rare. The volume and intensity of the popular opposition to immigration from these countries is but another expression of the same antithesis. In the long run, the increased ease with which people are transported and brought into juxtaposition with each other may tend to render of one mind the diverse peoples of the world, but the immediate effect is to bring into relief the differences that separate them. With all the advance in religious toleration, the differences between Jews and Christians and between Catholics and Protestants still act as a bar to marriage. The nomination and election of Judge Taft to the presidency awakened a real although unimportant opposition because he was a Unitarian. Probably neither of the two leading parties for years to come will dare to invite the opposition which the nomination of a Catholic to the presidency would arouse. And while religious differences have become less acute,

[1] Twelfth Census, Population, part i, p. cxcii.

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differences in refinement and education and in industrial, economic and social status have become more pronounced. The instinctive feeling against the miscegenation of negroes and whites in the United States is apparently as strong as ever. As society grows more highly differentiated, an excess of either sex in any social class becomes unavailable to make good a deficiency in another.

To sum up: Of the influences which dissociate the sexes and thereby determine the precise proportion of marriageable persons in each sex at any time and place, economic conditions are the most important. The affections play a subordinate rôle; they do not prevent matters of economic moment from separating the sexes, and they do not easily overleap the economic lines of separation even in single instances. Among economic conditions none is more fundamental to the modern industrial and social structure than transportation. By making possible an interchange of products, it has differentiated the work of the world into feminine and masculine pursuits, with the result that there is an excess of women in some localities and an excess of men in others. And since economic conditions are all the time shifting, no distribution of the sexes is equally good for all time, nor is there any distribution at any point in time that is equally good for every place. The forces in control usually stop far short of complete segregation, but they seldom bring about precise equality. There is a certain adjustment of the number of each sex to that of the other that best meets the need of each particular situation.

The limitations upon marriage due to the segregation of the sexes are for the most part independent of the human will and make for involuntary rather than voluntary celibacy. They abridge the opportunity rather than lessen the inclination to marry. The relative scarcity of either sex sets an inelastic limit which, in connection with the friction of distance, necessarily excludes a portion of the other from marriage; and the differentiation of society into classes tends to limit choice within class lines that are little less inelastic. The choices of the more numerous sex are subject to qualitative as well as to

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quantitative restrictions. It is not contended that these limitations act to the exclusion of all others or even that they are paramount. Probably the influences of chief importance in accounting for the decline of marriage and birth rates act through the agency of the will. Such at least is the view to which many economists and sociologists incline. The thesis here advanced and maintained is that the unequal division of the sexes within any geographic limits or class lines exerts an appreciable and at times an important influence.

The selective forces which segregate the sexes have been increasing in strength. The preference of the western movement for males has become less pronounced, and the excess of males is somewhat more evenly distributed over the country. On the other hand, the proportion of males in the country districts has slightly increased, while the proportion of females in the cities has become decidedly greater. At the same time the insistent demand of certain cities for males has still further dissociated the sexes. Again, the significance of the continued movement westward of the center of population should not be overlooked. The end of each decade has found a larger proportion of the total population residing where the scarcity of females limits the opportunity to marry. Moreover, immigration has swelled the proportion of males in the total population, notably among adults, and since 1900 this has been especially marked, partly because of the number of immigrants and partly because, in response to changed industrial conditions, new sources of immigration have largely supplanted the old. Finally, the segregating influence of cultural and other differences has been steadily growing stronger. The disappearance of the public domain, the growth of manufactures and commerce, the flocking to cities, the volume of immigration and the shifting source of its supply have been forcing the differentiation of American society for fully thirty years at an unusually rapid pace. The net effect of these several tendencies has been unfavorable to the marriage rate. Assuming that births have varied directly with marriages, the net effect has also been unfavorable to the birth rate.

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RADICAL DEMOCRACY IN FRANCE. IV[1]

MATURITY, DECLINE AND FALL

THUS at last had disappeared the three great shams of the age: a sham church, a sham army and a sham monarchy. What were the substitutes? Merely another set of shams. The Civil Constitution of the Clergy did not meet the wants of the religious, being abhorred alike by pious ultramontanes and by fanatical radicals. The enthusiastic but rowdy mob which composed the army had neither generals nor discipline nor supplies, and its first brilliant exploit was followed by disaster after disaster until the crowning disgrace of Neerwinden, when France was again invaded. The sham monarchy was succeeded by a sham "polyarchy," wherein Danton, Robespierre and Hébert were in turn the real but irresponsible dictators, evading the Convention and tricking the nation by devices which met each crisis but were destitute of permanent worth.

Step by step the Jacobin minority had been outwitting the Girondin majority in parliamentary tactics. The country now believed that the Girondins had brought on the war and had utterly failed in its conduct until the energy of the Jacobins had won the victory. It believed, further, that the Girondins harbored federalistic sentiments, making for division and weakness, while the Jacobins were securing a united front against a sacrilegious invasion. It believed, finally, that the Girondin majority had destroyed the monarchy only by a half-hearted apologetic indirection, while the Jacobin minority had no responsibility except for positive, vigorous deeds, essential to the preservation of the nation and the establishment of popular sovereignty. This growing conviction was the invaluable political outfit with which the Mountain set out to strip its opponents of every vestige of power and to save the gains of the Revolu-

[1] See POLITICAL SCIENCE QUARTERLY, vol. xvii, pp. 631–649; vol. xviii, pp. 238–253; vol. xxii, pp. 245–266.

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tion. Their task was stupendous. The execution of Louis left them without a single foreign ally; at home it was as a minority of a minority that they had to face exasperation, despair, anarchy. They had, however, gone too far to make retreat possible even if they contemplated such a policy. For them there was but one course: to substitute intensity for deliberation, patriotism for moral and religious emotions, expediency for principle, terror for habit and respect as the sanction of law. It was indeed a novelty, such flat contempt for tradition, experience and history, and as a glaring instance of political empiricism it must be judged.

The autumn of 1792 was tempestuous and the rains were so diluvian that the seat of war was turned into a morass. The Prussian army, as Goethe says, was a trailing hospital, for the ravages of dysentery were unprecedented. The French emigrant division under Brunswick had shown itself merciless to its peasant compatriots, burning the villages and looting the farmers' stores. The inhabitants retaliated by turning their land into a desert from which the invaders could get no subsistence. In the pitiful cross-play of back-stairs cabinets and court cabals which obtained at Berlin, Brunswick got neither supplies nor reinforcements. Pursuant to Danton's policy, and in the hope of securing an ally, Dumouriez made overtures to Brunswick, and the latter was fain to treat, if only to gain time. The negotiations lasted a few days, until Dumouriez's force was recruited by new men to 70,000, and it was clear that among the Prussian leaders there was no true sympathy for French radicalism or its policy. Thereupon the French general began to harass his wretched foe; he further cut off such scanty provisions as he could find, and so threw the whole force in miserable plight across the frontier.

For the instant the Girondins were showered with favors. Rousseau, although a Deist, had really substituted for God as a moral ruler the pale idea of nature; just as his radical followers were now defining and complementing that by the concept of country. As in the gospel according to Rousseau, nurture and education and morals and religion and government were to be "natural," so now the boundaries of France were, as an initial

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step, to be made "natural." Bitter and desperate as were the European monarchies, a small but active element among the peoples was alert to the successes of the French people. Belgium had risen two years earlier against its imperial master; Strasburg was a center for disaffected Germans, and Lyons swarmed with Savoyards eager to join in the emancipation movement. Here was a precious opportunity to secure the boundaries of ancient Gaul as Cæsar had defined them. The Girondins were "naturalists," as also, in this regard, were Danton and Lebrun, the minister of foreign affairs. The necessary orders were given, and the Republican armies invaded both Savoy and Belgium.

The invasion of Savoy began September 21, 1792, and was a pleasure march. Before Montesquieu and his 1800 men the Sardinian garrison fled, while the people hailed the French as deliverers, with transports of enthusiasm. They cheered the banner of liberty, planted liberty trees and opened their houses in hospitality. The Savoyards at Lyons had formed an Allobrogian legion, and Montesquieu now declared that the "Allobrogian people" should decide its own destiny. On October 14 the "sovereign national assembly" of the Allobroges was elected. At once, in the Cathedral of Chambéry, the new-found sister state fell into the arms of her senior by proclaiming the union of Savoy with France. Dr. Doppet was chosen as the official envoy to Paris; he was heartily welcomed; and his zeal for the Revolution, though often ill-directed, was not surpassed by that of any native Frenchman. The city of Nice suffered much at the hands of its new-found relations, but it endured their rudeness and followed the rest of Savoy, which thus became an eighty-fourth department of France in name as it later became in fact.

In this instance the judgment of the Convention proved to be as sound as its fraternizing policy was sincere. It might expect still further confirmation of its wisdom at other points on the frontier line. The Rhine country seemed a pear ripe for the hand of the emancipator. There were no less than five so-called sovereigns on the Rhine, three ecclesiastical and two secular princes. The archbishop of Cologne was so detested by his

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people that, being a son of Maria Theresa, he was called by the French the arch-beast of Austria. Although long a pensionary of the French crown, ke knew and feared the Revolution. The French emigrants he therefore kept at arm's length. Not so the archbishop of Trèves, who remembered the crib at which he had fed and made his beautiful capital of Coblentz a delightful place of exile for the royalist aristocracy. In this he was imitated by the elector of Mayence, but the bishop of Speyer detested the French generally. The elector palatine, duke of Zweibrücken, coquetted with the revolutionary government at Paris in order to afford no pretext for the invasion of his territories.

It was to the army of Alsace that the task of emancipating the Rhinelands was entrusted. Its commander in chief, Biron, duke of Dauzun, was too easy-going for the conduct of such an operation, and his lieutenant Custine, a soldier almost from infancy, who had served under Maurice of Saxony, under Frederick the Great and under Washington, enjoying the approbation of all three in turn seized the brilliant opportunity thus opened to him. He was high-born, dashing and capable, but boastful and contemptuous. Appointed to command the army formed for the purpose and designated as that of the Vosges, he entered Speyer on October 3, 1792, and Worms two days later. His men were thoroughly disciplined; the people were treated with every courtesy; and it was only the great who were made to suffer and to pay. So genial were the French that to the men of light and learning as well as to the populace the invaders seemed to be deliverers. The scholars of Mayence, men like the great jurist Boehmer and the famous physician Wedekind, summoned them to approach and even joined their forces as volunteers. The great personages of the court, from the elector down, fled in dismay; while the great men of the schools, Eckemeyer the engineer, Metternich the mathematician, Müller the historian and Forster, one of the first thinkers of his day, industriously agitated in behalf of the French. Custine had only to appear with his 30,000 men and his river flotilla to secure the surrender of the town. Frankfort hastened to make its submission with equal cordiality. Again the nobles and the

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rich had to pay while the poor received gratuities for their relief and the people acclaimed their new benefactors. On March 17, 1793, there met the National Rheno-Germanic Convention, which declared that from Landau to Bingen the Rhineland was united with France. Forster, Lux and Potocki were sent as delegates to the Convention and were cheered to the echo as they delivered the decree of annexation at the bar. In the Jacobin club, Forster declared that the Rhine was the natural boundary of France. His phrase remained a watch-word to the end.

The climax of Girondin glory, however, was the invasion of Belgium. Dumouriez was a diplomat by vocation and a general by avocation. Trained in the old school, the Carthage which France must destroy was for him the Empire in general, with Austria as its vital center. His coquetry with Prussia had left the Austrians with 15,000 men free to conduct the siege of Lille undisturbed. The besieging force under the duke of Saxe-Teschen was not sufficiently numerous to invest the place, but between September 29 and October 5 their cannonading was fierce: 60,000 red-hot cannon-balls fell on the town, 2000 persons were killed and some quarters were destroyed by fire. But the citizens were undismayed. Captain Origneur refused to leave his piece when summoned to see his new-born child; and barber Maes, snatching the sherd of an exploded bomb, made his lather in the extemporized receptacle and shaved fourteen persons amid the wild scenes of destruction about him. His novel shaving-cup became a well-known revolutionary emblem. General Ruault, when summoned, replied that, sooner than surrender, the garrison would find a grave in the ruins of the city. The Austrians retreated ingloriously to Mons when on October 7 Dumouriez's force drew near. The duke of Saxe-Teschen had collected only 20,000 men, but he had splendid artillery and one of the great fortifications of the time in which to make a stand. Dumouriez had 40,000 men, such as they were, in his own army, while on the right wing were 20,000 and on the left 18,000. In spite of this great array the Austrians drew up before Mons with their center at Jemmappes, where they made a gallant and intrepid resistance to the invad-

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ing French. The battle was joined on November 6, 1792. It began, as at Valmy, with a furious artillery duel of three hours; but the sequel was far different. It was only after retreating before a splendid Austrian charge under Clerfayt that a vast French column under the duke of Ghartres returned and seized the place. On the left and on the right likewise the French fell back initially before the Austrian onset, but likewise to return and repel their foe under the inspiration of the ubiquitous Dumouriez, who spurred his "children" on and led them as they sang the Marseillaise. The success of the French was pronounced, and the dispirited Austrians withdrew slowly through Luxemburg toward their distant homes. Before the end of November Belgium was at the feet of its deliverers.

We have noted the beginnings of military legend in connection with Lille. The battle story is universal, but in France it now became an institution. The Convention received the news of Jemmappes with delirious enthusiasm, and ere long the country rang with new tales of heroism—of the gallant old man Benoit, who hurried from Paris as a substitute for a coward son who had deserted; of valet Renard, who rallied a whole brigade when routed and flying and who, modestly asking leave to wear a uniform, was made a captain on the spot; of La Bretache, who received a crown of oak leaves with a sword of honor for having slain seven Coburg dragoons with his own hand to save the life of General Beurnonville; of two brave ladies, the sisters Fernig, who throughout the battle rode with Dumouriez's staff and cheered their countrymen to victory. These all were true instances, and it was a stimulus to daring that they were told and read near and far. But the system thus initiated amid the wild transports of revolutionaries soon grew to proportions so portentous that it fed more on invention than on fact and developed into a monster of lying legend. It is the thankless task of our day to destroy the whole legendary atmosphere of the revolutionary story as well as of the Napoleonic *epopée*.

The results of Dumouriez's work were, however, ominously different from those obtained in Savoy and in the Rhineland. The treatment of the Belgians by the French invaders was quite as considerate, and in due form a general election was held.

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But the assembly thus chosen desired to found an independent state and so instructed its delegates to the Convention. This was Dumouriez's own desire, and it was that of the Girondins in general, who wished to see France surrounded by a belt of buffer states devoted to French interests and under French protection. On November 19 the Convention issued a decree to that effect; delegations of Batavians and Brabanters, of Germans and Savoyards, even of Irish and English, appeared in its hall to denounce the tyranny of kings. Grégoire, president at the time, promised that the defenders of French liberty should be those of liberty everywhere and reasoned that, since all governments were the enemies of France and all peoples its friends, either France would perish or the peoples of the world would be emancipated. Camus and Danton were sent to establish democratic government in Belgium.

By that time, however, the army of France had made requisitions of supplies and had offered pay in paper money (*assignats*), while forced loans were collected in specie. All local authorities were overthrown and Jacobin clubs in all the towns were busy in the task of awakening "the holy ardors of civism." The devout and superstitious Catholics, an overwhelming majority of the Belgian burghers, began to dread the disorganization of the church and the confiscation of ecclesiastical estates. Before the middle of December a stubborn resistance to radical measures was universal. The French commissioners announced that war must pay for war; but they found that the stolid Netherlanders were ungrateful enough to hold their emancipation cheap if not worthless when the pay had to come from their own pockets. The Convention was horrified, and in its decree of December 15, 1792, it announced the policy of confiding the destruction of old institutions and the establishment of new ones in the invaded territories entirely to its own agents. This was to substitute conquest for emancipation, since it meant the substitution of *sans-culotte* or penniless "trousered" officials for privileged ones, the confiscation of church domains, the overthrow of all feudal rights by the "municipalizing" of the peoples. The French system in its entirety was to be imposed by force, and suddenly, upon numberless communities

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who did not comprehend its first principles. This in logic must bring all conquered territories under the Convention as new departments; to emancipate humanity, an army of French vulgarians must be inducted into thousands of comfortable offices. Some unimportant steps had been taken by Jacobin partisans in the Netherlands toward following the example of Savoy and the Rhineland, when like a fierce hail-storm the resentment of Belgium and Germany broke on the bright horizon of the French republicans. Reform at French expense was one thing, French usurpation for French advantage was quite another. How were French plebeians better than native commoners? and why should offices with their emoluments be entrusted to greedy foreigners during any interval, long or short, especially when the interval was to be used for extorting sound money, good food and costly shelter, with no return, except paper rags which were the promises to pay of a governmental system utterly untried? Between the lines of the decree passed by the Convention on December 15, 1792, could be clearly read this intolerable determination. The only possible result speedily followed: it was on the Jacobin and not on the Girondin basis that war was henceforth to be conducted.

There were now two sets of French officials in Belgium: Camus, Danton, Delacroix and Gossuin were a committee of the Convention determined to execute its ruthless decree. Just as the Allobrogians had formed a legion auxiliary to the French army and incorporated in it, so under the powerful influence of Anacharsis Clootz there had been organized the embryo of a Dutch or Batavian legion and the skeleton of a Brabantine or Belgian legion. The representatives of the Convention meant to organize both a Belgian national guard and a regular Belgian army of 40,000 men to be incorporated with the French troops; and behind this serried rampart they further intended to erect a unitary, centralized, Belgian republic, whose departments might one day become departments of the French republic. Their aid in all this was to come from the Belgian populace; the officials were to be French proletarians; and the funds were to be obtained by the confiscation of noble and ecclesiastical properties. "Peace to the cottage, down with the castle" was

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the watchword. But Dumouriez was the conqueror of Belgium, and he would have nothing to do with such a programme. He had a programme of his own, from which the cloven foot of the Gironde could be seen emerging. He wanted a federal republic definitely independent; and his reliance was on the conservative and the well-to-do, even on the aristocracy. From the new government, thus constituted, France could ask and get a sum of money wherewith to defray all the expenses she had incurred for the war. "I would not be the Attila, the scourge of Belgium," he cried. It was only to the fierce menace of the Convention committee that he finally yielded in sullen submission. Shorn not merely of his own glory, he saw his friends and supporters utterly deposed from power and stripped of the capital they had accumulated in war and in peace.

Danton's determination was promptly taken: Belgium, recalcitrant to administrative measures, was to become French at the point of the bayonet. Three brisk new Jacobins, Treilhard, Merlin de Douai and Robert, were sent to reinforce the committee, and thirty national commissioners, so-called, were selected to enforce the latest decree. The seven were able and decent but determined men; the thirty were wild, brutal, unscrupulous creatures, and with them came a horde of understrappers, adventurers from the very dregs of the Paris commune. There was thus created a wild fury of sequestrations, of domiciliary intrusions, of incarceration, rapine and pillage which beggars description. Soldiery and civilian ruffians vied with each other in terrorizing the nobles, the clergy, the burghers and the peasantry without discrimination, until the land was thoroughly cowed. Paper money circulated under compulsion, and in despair the primary assemblies met to vote the union of Belgium to France. For the most part these meetings were held in churches guarded by companies of scoffing soldiers under arms. A wretched consummation was reached in February, 1793, when the act of annexation was passed. The new departments were embittered, sullen and ready to rise in rebellion against their masters. The "natural" boundaries of France now contained the bitterest enemies of the Revolution.

Passionate as was the zeal of the Rhineland for emancipation,

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its peoples were equally averse to pay the cost in ringing coin. A tax of two million florins, about one million of our money, laid on the town of Frankfort; the proportionately substantial contributions laid on noble and ecclesiastical domains; above all, a system of holding important personages as hostages for loyalty and as pledges for payment, speedily turned the complacency of the Palatinate into fury. The masses rose in arms and, charging the French with warring upon storehouses, barns and wine-cellars, prepared to recall their old rulers.

The execution of the man styled by the Convention M. Capet was a gauntlet thrown down in defiance to the whole system of monarchy. Thomas Paine spoke of M. Guelf, otherwise George III, as head of a monarchical conspiracy against the republic. Lord Liverpool retorted that a universal republic, as outlined by Jacobin policy, was more dangerous to Great Britain than even the universal monarchy dreamed of by the Bourbons. Belgium seized and the Scheldt opened to all nations, Holland menaced —where were the fortunes of England? Confronted by such conditions she would be ruined in attempting to deal, not with a single executive head, but with a King Demos of indeterminate size, quality and irresponsibility. Chauvelin, the regular agent at London, and Maret, an envoy extraordinary of the Convention, both labored in vain to secure recognition at St. James's for the French republic; while from his obscure dwelling in London, Talleyrand kept warning Lebrun, the minister of foreign affairs at Paris, of what would be inevitable without the exercise by the Convention government of prudence and temperance, the two virtues most remote from the collective mind of that desperate body. Of this fact Pitt was well aware. He first denounced the commercial treaty with France, negotiated in 1786; he forbade the export of English grain to France; and he had Parliament pass the "alien bill" in order to rid his country of Jacobin agitators. When on January 23, the news of Louis's judicial murder reached London, the court went into mourning and the country awaited developments in consternation.

France declared war on February 1, and Pitt negotiated in quick succession treaties of alliance with Russia, Hesse-Cassel,

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Prussia, Sardinia and Naples. It was a strange coalition, cemented only by British subsidies and a common terror. Tuscany was reluctantly compelled to enter the band. In Rome, feeling ran so high that Basseville, the French agent, was strangled in a street brawl. Charles IV of Spain, horrified by the fate of his Bourbon kinsman, replaced his prime minister d'Aranda, a true statesman, by the queen's paramour Godoy, a strutting coxcomb, eager for hostilities as an opportunity to divert public attention from court scandals. France declared war on Spain on March 7, 1793. The German Empire was in a state of pitiful vacillation; but when its princes despaired of indemnity for their feudal rights in Alsace, when Danton announced the Rhine as the natural frontier of his country, when Beurnonville attacked both Trèves and Coblentz, though bootlessly, and simultaneously Custine issued an appeal to "oppressed Germany," the Diet at Ratisbon was finally goaded into action and, on March 22, declared hostilities against France. It was almost a perfect work which Jacobinism had accomplished. It had united against France all that was powerful in Europe. Denmark, Sweden, Turkey, Venice, Geneva and Switzerland, six powers with no physical strength and no great moral force, were the only neutrals. But there was now a France which had committed itself to victory or annihilation, united with bonds of steel in its dread lest the fate of Poland should be its own.

The circumstances under which the Convention took the offensive against Europe were in a way typical of its career. Holland, and especially Amsterdam, then styled, with considerable truth, the Bank of Europe, was the objective point. Jacobin agents had announced a Batavian accession, the Batavian zeal must be quickened. It was of course Dumouriez's army which must advance. But Dumouriez was now a changed man. His plan of invasion indicates either that his mind had failed or that, as a good Girondin, he was willing to play the Jacobins a sorry trick. His army had fallen into a condition bordering on destitution and anarchy, but he declared that he could re-array it as speedily as once before. With Antwerp as a base, he was to march on Rotterdam, while his subordinate, Miranda, with 25,000 men would seize Maestricht and advance to Utrecht for

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a junction before they attacked Amsterdam in combination. Valence with 35,000 men would make a stand at Aix-la-Chapelle and defy the advancing Austrians. But not one of the three French generals could have performed his task without the most careful preparation, and for that there was neither time, cash nor materials. Accordingly every single one of the three failed, as was to have been expected in days and places where miracles were no longer wrought.

Austria had substantially reorganized her forces; and Coburg, though a very mediocre general, had as his lieutenants men whose names were yet to resound over Europe—Colloredo, Alvinzi, Archduke Charles and, in particular, Mack, who until paralyzed by Napoleon was considered a military genius far beyond the others. It was he who began the rout of the French by defeating Valence at Aldenhoven. Miranda, thus exposed, had to withdraw from Maestricht, and so near to flight was his retreat that panic set in and ten thousand of his men deserted. Coburg seized Liège and levied enormous contributions, taxing fourfold the estates of known revolutionists. Belgium as a whole made ready to throw off French bondage. Dumouriez with some difficulty effected a union with Valence and in desperation attacked the Austrians at Neerwinden on March 18, 1793. To a certain extent his confidence in his ragamuffin troops was justified, for they fought like heroes, seizing the approaches of the fortress three successive times in terrific charges, but only to be thrown back as often with fearful carnage. It was Miranda on the left who was first overwhelmed. Dumouriez, fearing to be surrounded, as it then seemed nearly certain he would be, drew off; he was twice defeated on his retreat, at Diest and Louvain; and, thus compelled to abandon Brussels, he was first enabled to make a stand on the line of the Scheldt. His position there, stretching through Gertruydenberg, Breda, Antwerp, Courtray and Tournay to Mons, was too strong for further attack from his victorious foes. It was so well taken that it almost reëstablished his military character.

Gens gallica gens perfida was the terse judgment of the Netherlands on their experience with Jacobin administration. Dumouriez, gallant soldier and generous foe, had seen with

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horror the conduct of the thirty commissioners and their satraps. His freely expressed detestation brought him into bitter antagonism with the Convention committee and with Pache, now minister of war. In a public proclamation he had already denounced the Jacobin program of warfare as contained in the decree of December 15, 1792. Now he addressed the government in a denunciatory letter, March 12, 1793, and charged his defeat to the unbridled license of its emissaries. Nothing he declared, except his own moderate policy could save the French army, the national honor and the republic itself. The administrative committee to which he read the document was outraged: it felt that the die had been cast and that Dumouriez's language and attitude were those of a conspirator against the holy cause of republicanism. They denounced him to his face as a Cæsar; and Camus calmly declared that, should the general prove so to be, he himself would be a Brutus. The general sense of the army was profoundly influenced by the judgment of the commissioners, and both rank and file refused support to their general. Finding himself thus discredited and virtually abandoned, Dumouriez took his fatal step: he entered into secret negotiations with his foe, proposing to turn with his troops and accompany the invaders to Paris in order to restore order under a monarchy, leaving Austria mistress of her possessions in the Low Countries. These dealings were soon known in Paris; a committee was designated to take final action in the case; it was either to win back the general or to depose him from command of the army. The meeting took place at Tournay, and the committee was ambushed, for, when they summoned the general to the bar of the Convention at Paris and, meeting with the expected refusal, read the solemn letter of suspension, Dumouriez in a firm voice called in the Austrian guards who had been posted at the doors and placed under arrest both the commissioners and his own colleague, Beurnonville. Dumouriez's staff supported him heartily. Not so the army. After herculean exertions he succeeded in rallying some supporters, and, at the very end, two regiments set up the cry of "Hurrah for the king." But the effort as a whole was vain. One after another, generals, officers and men rallied to the cry

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of "Country and law," their hearts fired with the idea of patriotism as the defence of home and children. To Dumouriez they retorted: "The republic or death." In fierce indignation Davout ordered a batallion of volunteers to fire on the traitor and they obeyed. The lot had fallen. Dumouriez escaped with his life and concerted with Coburg a plan to restore the constitutional monarchy in France with Louis XVIII as king, arranging for the Austrian occupation of fortresses in the north and a march on Paris; but when this was known even the two royalist regiments were forced to recant under the menace of a savage outburst of wrath from artillery volunteers and the line itself. With Valence, Thouvenot and the duke of Chartres, Dumouriez fled to the frontier. But even there he was not safe, for Thugut, the Austrian premier, disavowed Coburg's agreements, and Dumouriez found himself an outlaw on the continent. Neither Switzerland, Wurtemberg, Cologne nor Belgium would harbor him. After pitiful wanderings in Russia and Sweden he found asylum in England, where he dragged out a wretched existence until his death in 1823.

The fate of Custine was only less disastrous. With an army destitute of commissary, munitions and reinforcements, he could not hold his own against the coalition. One by one he lost every inch of conquered territory on the Rhine except Mayence, and retreating without glory he entered Landau on April 1, 1793, to find himself a suspect and threatened with death. He pleaded his Jacobinism and his devotion to the cause so ardently that he found a defender in Robespierre and secured a vote of confidence from the Convention. He was then appointed to command the army of the north; but his success was only a truce with death, for in the event he died on the scaffold, a sacrifice to the nemesis of defeat.

In the history of Jacobin warfare there is no more gloomy page than that which records the surrender of Mayence to the Prussian besiegers. The commander was d'Oyré, a comrade of Lafayette's in America. His subordinates formed a splendid galaxy of military stars, the most renowned of whom was Kléber. Rewbell and Merlin de Thionville were the representatives of the Convention. Their business was the civil admin-

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istration of affairs, but they fought like their military comrades, as brave in arms as they were inspiring in language. The gallant resistance endured until July 23, 1793, when from stress of famine the little garrison marched out with all the honors of war and under no engagement except to refrain from participation in the hostilities for a year. The adamantine temper of the Convention was shown in an effort to disown the surrender, on the ground that a relieving force under Beauharnais and Houchard was nearing the town and would have broken the siege in a few days. But its own representatives on the spot so fiercely resented the imputation of cowardice that they converted their colleagues; they secured a decree declaring that the defenders of Mayence had deserved well of their country; and, since a victim there must be, it was Beauharnais who expiated his tardiness by death. Five days later, on July 28, 1793, Valenciennes was reduced and fell before the Austrians. The Piedmontese passed the Col di Tenda and could not be dislodged from the post which they seized on the soil of Savoy. Spanish troops crossed the line of the Pyrenees and occupied Perpignan and Bayonne at the two extremities. Five invading armies were in France. The Vendée rose in revolt. England blockaded all her enemy's ports. Cayenne and Bordeaux threw off the Convention's yoke and stood ready to receive foreign aid. Lyons appealed to Piedmont for succor; Toulon harbor was seized by an English fleet and the town surrendered. Corsica called Paoli to rescue it from the coils of Jacobinism.

It is constantly repeated, as a savage condemnation of the French in both the revolutionary and Napoleonic epochs, that they deliberately planned a complete reconstruction of the European state system. The charge is true. They knew nothing different; for exactly this was the gist of foreign policy in every absolute monarchy of Europe. The kingdoms in coalition against France were of exactly the same mind as were the French, and they were quite as determined. When Dumouriez had taken flight and Coburg's promise not to war for conquest but only for order had been frankly disowned by Thugut, the powers made ready to divulge their plans for dismembering France as they had already begun to dismember Poland and for

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thoroughly reconstructing by a series of compensatory exchanges the entire map of Europe. A conference for that purpose was held at Antwerp on April 7, 1793. While there were various suggestions, in the main it was agreed that England was to have Dunkirk and the French colonies; Austria was to receive all the flat country as far as the river Somme together with Bavaria, whose duke in compensation for his loss was to rule over Alsace-Lorraine; Piedmont and Spain were to have the provinces coterminous with their boundaries; Prussia and Russia were to divide the rest of Poland. Just enough of France would be left to support a second-rate Bourbon monarchy. We may not feel or express too great amazement that Jacobin France, otherwise patriotic France, was desperate. Armies defeated and decimated by desertion, generals discredited, the land reduced to famine by the interdict against the importation of grain, coasts blockaded, great cities and districts in rebellion, Romanists eager for foreign intervention, Girondins not unwilling to accept it for party purposes, paper money worthless, surrounding enemies engaged to tear the country unit from unit—there is no supplementary element of despair that can be mentioned. What was a "polyarchy" Convention, usurping the power of democracy, disdaining its own professions, mouthing fine principles, behaving like an irresponsible tyrant—what was such a body to do? The answer lies on the surface: it must abdicate. This it did. The 750 tyrants continued to sit, but it was merely to discuss great principles and to delegate powers they did not possess to persons and committees. These framed and executed a policy of national defense which, since it proved successful, has been lauded far beyond its deserts.

When the men of the American revolution were face to face with the problem of self-government at the close of the war, they discovered that their political ideas must long remain theoretical tendencies and nothing more. Men might be created equal and endowed alike with inalienable rights to life, liberty and the pursuit of happiness. but there were continued in practice inequalities of suffrage, taxation and representation of the

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most glaring kind. The bills of rights prefixed to the state constitutions recapitulated every familiar inherent right and the safeguards thereof, as constituting a metaconstitutional charter with which the constitution itself might not interfere. Yet Vermont alone provided for manhood suffrage, and almost everywhere there were religious tests for office-holding. The catalogue of inconsistencies might be expanded indefinitely. But as the time went on, and as occasion served, these inconsistencies of theory and practice were remedied one by one, at least for white populations. The process has been interrupted; at times there has been a backward movement; much still remains to be done. Nevertheless the plain people have steadily secured a greater and greater share in the management of politics.

Parallels are dangerous and misleading; yet the resemblance and the contrasts to this American movement in the Convention epoch of French history are illuminating. The radicals had created as an ideal a sort of America which never had existed, and to that phantasm they made from time to time a rhetorical offering. As has now been sufficiently set forth, the American bills of right had much influence in framing their own. Of American inconsistencies no important discussion seems to have occurred in their debates. But in glaring contrasts of theory and practice they outstripped every known historical case of inconsistency while making every lofty and righteous profession of principle. Fully aware, as they were, of their untenable absurdities, they had but one excuse—the safety of the country, which they gratuitously assumed was possible only in their keeping. Hence, under the grinding despotism of an oligarchy, created not by the exercise of volition but engendered and controlled by a blind and timid fatalism, they permitted adventitious instances to usurp the place of historical foundations until their ruin was accomplished. In the whole sorry tale there is no proof that they had any monopoly of country-saving; and there is every proof that it was in the interest of a sectarian fanaticism that they savagely usurped power and, through social disintegration, brought France itself to the verge of ruin at the moment of her greatest military renown.

WM. M. SLOANE.

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THE RECONSTRUCTION OF KOREA

JAPAN is now performing an experiment which is, from one point of view, new in the history of the world. Western nations have assumed political control of Eastern peoples in a number of cases. This has been done in turn by each of the great western nations. Protectorates are therefore nothing new. But never before in the history of the world has one oriental nation assumed a protectorate over another. There have previously been attempts upon the part of one oriental nation to conquer another: even peace-loving China has made such attempts: but a thorough-going reconstruction of the political institutions of another people is a work which no oriental nation except Japan has ever attempted. Such work has hitherto been undertaken only by Caucasians. The experiment of Japan in Korea is, therefore, unique, and is worthy of careful study by all interested in political or ethnic science.

Not only because of its unique character is this experiment worthy of study, but because of the effect which its success or failure is likely to produce upon the future course of history. For more than a decade the Orient has been the stage upon which the events of greatest significance in determining the course of civilization have taken place, and the conditions which have produced this result seem likely to persist during the twentieth century. The balance of power in the Orient, though not the only diplomatic problem of the twentieth century, is the greatest. Compared with it, the balance of power in Europe, which has been the pivot about which the world's diplomacy has revolved during practically the whole course of modern history, becomes a relatively small question, whether considered from the viewpoint of the area affected or from that of the number of people concerned. China alone is nearly as large as all Europe, and it contains more people. To Americans the balance of power in Europe is a matter of indifference, while the balance of power in the Orient is of vital interest.

It may be that the results of this experiment will prove that

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the Caucasian race has no monopoly of the qualities which fit a people for leadership. To predict that such a demonstration will produce a profound effect upon the future course of political development does not require any rare degree of foresight. It is but natural that the degree of influence which Japan will be able to exercise in the remaking of the political institutions of China will depend measurably upon the degree of success attendant upon her experiment in Korea. Failure would lessen, if not destroy, Japan's taste for the work, *i. e.* for bearing the "white man's burden," and would at the same time destroy China's confidence in Japan's powers of leadership. One may drive by main force, but leadership without the confidence of one's followers is impossible.

When therefore we consider the indirect consequences of success or failure in the performance of the task which Japan has undertaken in Korea, the experiment ceases to appear one of local interest only; it becomes of world interest. It is therefore fitting that we examine carefully what Japan has done thus far toward improving conditions in Korea. For, while it is too early to reach a definite conclusion as to the chances of success or failure, what she is doing enables us to perceive what things she considers important and how she is doing them. This gives us something of a basis upon which to rest a judgment as to her grasp of the situation and as to the intelligence shown in the choice of means for dealing with it.

The reforms thus far attempted by Japan in Korea may be conveniently grouped under, and are fairly covered by, the following heads: educational, sanitary, economic, administrative and legal.[1]

I

Japan very properly determined at the outset that no government can work successfully without a reasonably wide diffusion of intelligence among its subjects. And as she found in Korea practically no provision for the education of the people, she at once turned her attention to the remedying of this vital defect.

[1] For many of the facts in this article I am indebted to reports of the Japanese government for 1907–08 and 1908–09, on Reforms in Korea.

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As in all priest-ridden countries, education in Korea was in the hands of the priests. Only the upper classes of the Koreans had any opportunities for education beyond the instruction in reading and writing given by the village priests. In the higher institutions of learning, of which there were very few, the old Confucian system was maintained. As a result, no class received a practical education. To take the place of this altogether inadequate system of education, Japan has begun the establishment of a system of manual-training schools, common schools, high schools, commercial, industrial, agricultural and medical colleges. In short, the attempt is being made to supplant an antiquated by a modern system of education. The appropriations have been increased from a few thousand to five hundred thousand *yen*. An industrial training institute has been established in Seoul at an expense of about ninety thousand *yen* for buildings and machinery. In this school courses are given in the following subjects: (1) dyeing and weaving, including bleaching, printing and weaving of cotton, hemp, silk and wool; (2) the making of porcelain and pottery; (3) casting, tempering and finishing metal work; (4) carpentry, including building, joining and wheelwright work; (5) applied chemistry, including paper making, tanning, soap manufacturing, glue and gelatine making, the manufacture of artificial fertilizers, oil extracting and chemical analysis; (6) civil engineering. Whatever one may think of the reforms which Japan has inaugurated in other matters, it is difficult to escape the conclusion that in her educational reforms she has shown excellent judgment. By throwing the emphasis upon manual training she has not only put herself in line with the thought of the best modern educators, but has shown a keen appreciation of the needs of a sluggish, lazy people and of the most effective method of waking them up.

II

Among the encouraging developments of the past decade is the increased attention given by governments to protecting and promoting the health of their citizens. The work of the United States in Cuba furnishes an excellent example of what a government can do by a scientific, well-directed effort toward improv-

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ing the sanitary conditions of a country. As a result, yellow fever has been brought under control by investigation of its causes, and the possibilities of the tropics as the home of a vigorous people have been immeasurably increased. The record forms one of the brightest pages in the history of our achievements for the benefit of mankind. Finding Korea without means of furnishing wholesome water to its cities and without hospitals for its sick, Japan proceeded at once to build waterworks and hospitals for the principal cities. The need of these as a protection against epidemics and for promoting the general health was so imperative that it was not judged wise to depend upon private initiative for furnishing them. When we remember that in Korea private initiative had done practically nothing in this direction, the conclusion that the government should assume the responsibility seems to be amply warranted. While there may be room for difference of opinion as to the advisability of thus widening the sphere of governmental activity when individuals or private associations are supplying the demand, the situation is a very different one where individual initiative cannot be depended upon to meet the need. From the modern point of view, the question of health is more important than the question of cost. For the promotion of the public health, which in all civilized countries has come to be considered a necessity, the government has appropriated over eleven million *yen*.

III

For economic progress, for the establishment of efficient government and for the attainment of a high degree of civilization, the development of means of communication has always been among the prime requisites. In no respect was the inefficiency of the Korean government more clearly shown than in the almost complete lack of railroads or wagon roads in the country. It did not take the Japanese long to decide that such conditions must not be allowed to continue. At a cost of 85,251,666 *yen* they have completed a railway line from one end of the peninsula to the other. This line will be connected with the Eastern Chinese Railroad as soon as the bridge across the Yalu river is completed; and Korea will then be connected not only

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with the railway system of China but also with that of Russia. That the railways are appreciated is shown by the fact that the freight tonnage has increased from 391,175 tons in 1908 to 737,693 tons in 1909. But though railways serve to develop cities or mining camps, the uniform development of a country is impossible without good wagon roads, and without the latter the former can render but a part of the service which is expected from them. The Japanese have therefore very wisely directed a portion of their energies to the building of wagon roads. In this work they have already expended one and a half million *yen*, and they have contracted for roads which will cost as much more. One hundred and sixty-two and one-half miles of road have been built by the general government. To supplement the work being done by the general government, the localities are encouraged to expend as much as they can afford for the same purpose. When the resources of the naturally rich but undeveloped regions traversed by these roads are made available, it will no longer, as now, be necessary for the government to borrow money to make so necessary an improvement as the building of roads. Apart from their purely commercial value, there is no improvement which so promotes the unity of a country and so increases the efficiency of its government as the building of good roads. The extent to which they decrease the tendency to revolution, is well illustrated by the history of such Latin American states as Mexico and Argentina.

The progress in the telegraph and telephone services made under the direction of the communications bureau during the last four years is shown in the following tables[1]:

TELEGRAPHS

FISCAL YEAR	OFFICES OPEN TO PUBLIC	LENGTH OF LINES	LENGTH OF WIRE	DOMESTIC MESSAGES	INTERNATIONAL MESSAGES	MESSAGES IN TRANSIT
1905-6	86	2,883	5,895	915,327	654,327	1,386,915
1906-7	117	3,048	6,448	1,455,794	578,557	1,916,706
1907-8	146	3,193	6,783	1,683,645	656,942	1,922,436
1908-9	172	3,215	7,046	1,992,957	677,792	2,189,012

[1] Report for 1908-09, p. 118.

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TELEPHONES

FISCAL YEAR	OFFICES DEALING WITH TELEPHONES	AUTOMATIC TELEPHONE BOXES	LENGTH OF LINES	LENGTH OF WIRE	NUMBER OF USERS	NUMBER OF MESSAGES
1905–6 . .	13	8	78	832	1,065	4,748,307
1906–7 . .	22	8	129	3,048	2,362	8,498,882
1907–8 . .	39	15	159	4,050	3,296	11,407,440
1908–9 . .	64	21	198	5,479	4,031	12,562,851

IV

Though the value of monetary and financial reforms is sometimes overestimated, it cannot be doubted that they are an important factor in the economic development of a country. It is therefore worthy of note that Japan has placed the financial system of Korea upon a gold basis. It has abolished the private minting of nickels and has adopted measures to discourage the use of "cash" and to encourage the circulation of bank notes. In order to facilitate the making of long-time loans, the government is encouraging the establishment of industrial and agricultural banks.

For the purpose of promoting the productive industries upon which the great majority of the Koreans depend, the government has organized a department of agriculture, commerce and and industry. The importance which the government attaches to this department may be judged from the fact that its head is appointed by the emperor of Japan. Under its direction there has been organized a model farm or what we commonly call an experiment station. It represents the first attempt to make a scientific study of the agricultural resources of the country, the adaptability of its different varieties of soil to the raising of different crops, the most valuable kinds of fertilizers to use upon the different soils, the most advantageous methods of cultivating, the selection of seed and the amount which ought to be planted in order to bring the best results, the most effective methods of exterminating the different kinds of pests, the breeds of stock which can be most profitably raised, the kinds of feed which give the best results for different purposes, the varieties of fruit which do best under the different conditions

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of soil and climate. All this seems perfectly simple and natural to us; but in Korea it marks a very great advance, the beneficial effects of which the more progressive of the people are beginning to appreciate.

Under the direction of this department, further, there has been formed a cotton cultivation association. The purpose of this organization is to find out whether or not the soil and climate of Korea are such that cotton can be profitably raised in the country. Though the desultory experiments which had hitherto been made were not successful, it is believed that their failure was due rather to a lack of judgment in the selection of varieties of seed and methods of cultivation than to inherent defects in soil or climate. The association has arranged for the expenditure of a hundred thousand *yen* in experimenting with different varieties of seed and methods of cultivation. These experiments are to be conducted by the model farm and its branches. If the experiments prove successful, cotton raising will soon become one of the leading industries of the country, as it is assured of an abundant market close at hand. Though the United States need not become apprehensive of the early loss of its far-eastern market for raw cotton and cotton goods, the experiment is one which may have an important bearing upon our foreign commerce.

There has also been established, under the direction of this department, a forestry school, in which instruction was first given last year. To supplement the theoretical consideration of this subject, the government has decided to establish three model forests, near Seoul, Pingyang and Taku; and for this purpose it has provided for the expenditure of two hundred and ninety thousand *yen*, to be distributed over a period of six years. As soon as these experiment stations are fairly under way, three others are to be started in other parts of the country. Laws have been passed for the protection of the forests. When we recall that Korea had hitherto had no forestry laws and that the lack of forest protection has resulted in its mountain ranges being practically denuded by lumbering methods with which, unfortunately, Americans are familiar, the importance of the present movement for the rehabilitation of Korean

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forests, whether regarded from the economic, sanitary or æsthetic point of view can be readily appreciated.[1]

For the purpose of promoting the development of the mineral wealth of Korea, which by many is believed to be considerable, the old mining bureau, for whose existence little excuse could be found, as it collected no statistics, submitted no re-

[1] In view of the interest now taken in the conservation of natural resources, it is perhaps desirable to reproduce, from the Report for 1908-09, pages 200, 201, the main provisions of the Japanese forestry law, promulgated January 21, 1908.

Article 1. The forests shall be classified, according to the nature of their proprietors, as crown, state, public or private forests.

Mountains and plains shall be treated under the present law as forests.

Article 2. Regulations relating to the sale, assignment, exchange or lease of state forests or mountains or plains or to the sale of the produce from state forests shall be determined by imperial ordinance.

All forests or mountains or plains whose preservation is necessary for the sake of territorial security or for purposes of the management of state forests or mountains or plains may not be sold, assigned, exchanged or leased.

Article 3. The minister of state for agriculture, commerce and industry may convert part of state forests, mountains or plains into joint forests on condition of sharing profits with the planter.

Article 4. The trees in a joint forest shall be the common property of the state and the planter, the respective percentage of their proprietary rights being determined by their ratio of profits.

All trees existing therein previous to the creation of the joint forest shall be the property of the state.

Article 5. The minister of state for agriculture, commerce and industry may include the places mentioned below among preservation forests:

(1) Places required for protection against a landslide.
(2) Places required for protection against sand blasts.
(3) Places required for protection against inundations, winds or tides.
(4) Places required for the prevention of snow slips or the rolling of stones.
(5) Places required for feeding water sources.
(6) Places required for fish culture.
(7) Places required as marks for navigation.
(8) Places required for purposes of public health.
(9) Places required for the purposes of shrines, temples, mausoleums, imperial burial grounds or parks, or for the scenic effect of noted or historic resorts.

Article 6. Trees in preservation forests shall not be cut all at one time or such forests shall not be reclaimed.

Article 7. The minister of state for agriculture, commerce and industry may prohibit or restrict the felling of trees in a preservation forest.

Article 8. When the conversion of a forest into a preservation forest occasions damage to its owner, the latter shall be entitled to compensation only with regard to the direct damage arising out of the prohibition of the felling of trees. No such compensation shall be allowed in the case of the crown or state forests.

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ports and supervised no mining, has been reorganized under the direction of the department of agriculture, commerce and industry. The first result of this reorganization has been the introduction of reasonable rules and regulations, in place of the old chaos which had gone a long way toward discouraging all mining enterprise. Under the old régime, concessions were

The compensation mentioned in the preceding clause shall be paid by the party or parties directly benefited by the creation of said preservation forests.

Article 9. When the necessity for the existence of a particular preservation forest ceases to exist or when special consideration of public utility requires it, the minister of state for agriculture, commerce and industry may liberate such preservation forest.

Article 10. With regard to forests, mountains or plains where trees ought to be preserved, the minister of state for agriculture, commerce and industry may order the owner to plant trees or protect them. In case the owner fails to comply with such orders, the minister of state for agriculture, commerce and industry may either carry out the necessary work and collect the cost from the owner of the forest or convert such forest into a joint forest.

The joint forest created in virtue of the preceding article shall fall under the scope of the provisions of Article 3 and Article 4 of the present law.

Article 11. In case a forest has been infested by injurious insects or when such danger is apprehended, the owner of the forest should at once take measures of extirpation or prevention as the case may be.

In the case mentioned in the preceding clause, the minister of state for agriculture, commerce and industry may order the owner of the forest to carry out the necessary measures of extirpation or prevention.

When the owner of the forest fails to carry out the order mentioned in the preceding clause, the minister of state for agriculture, commerce and industry may carry out the necessary work and collect the cost from the owner.

Article 12. No forest, mountain or plain shall be reclaimed without the permission of the minister of state for agriculture, commerce and industry.

Article 13. No graveyard shall be established in a forest, mountain or plain without the permission of the owner.

Article 14. The burning of the undergrowth shall not be carried out without permission from the competent local authorities or police officers.

Article 15. Anybody who has stolen from a forest its principal or by-products, shall be liable to punishment according to Articles 602 and 603 of the Penal Code.

Article 16. Anybody who has reclaimed, or set fire to, a forest, mountain or plain belonging to another person, shall be liable to punishment according to the provision in Article 669 of the Penal Code.

Article 17. Anybody who has injured trees in a forest belonging to another person, or who has removed or injured marks erected for a forest, or who has violated the provisions of Article 6, Article 12, Article 13 or Article 14, or disobeyed the order mentioned in Article 7, shall be liable to imprisonment or to a fine of not less than one *yen* and not more than two hundred *yen*.

Article 18. Orders necessary for the carrying-out of the present law shall be determined by the minister of state for agriculture, commerce and industry.

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sometimes canceled without cause and without compensation, and the same concession was sometimes conveyed to several persons, one after another, without the slightest regard in either case for the prior rights of the preceding purchasers. The lack of any law regarding mining titles, leases or concessions and the arbitrary conduct of the administration naturally rendered the rights of operators uncertain and insecure. Taxes were levied according to the whims or necessities of the tax-gatherer; and if the operator attempted to export what was left of the output, he was subjected to an arbitrary tax upon exports, levied by the provincial authorities. It was but natural that capital should hesitate to embark in an industry in which the deterrent influence of insecure titles was intensified by arbitrary tax exactions. Under such conditions the industry would be carried on, not by honest capitalists, but by unscrupulous adventurers, who would not hesitate to resort to bribes and all sorts of chicanery as means of protection. It is useless to expect an industry to thrive when it is thus forced into the hands of the worst classes. Under the present mining law, full protection is given to mining concessions. They may be sold or mortgaged, and they are heritable. The rate of taxes can be ascertained when the application is made for the concession. It is reasonable to suppose that under these changed conditions there will be a marked increase in the output of Korean mines, which at present is estimated at six million *yen* per year. Among the mineral products of Korea, are gold, silver, copper, graphite and coal.[1]

[1] The most important provisions of the Japanese mining law are here reproduced from the Report for 1908–09, pages 193-195. The law may furnish valuable suggestions even to states in which mining is further developed than it is in Japan.

Article 1. The term mining shall be construed to mean the extraction of minerals and all work incidental thereto.

The kinds of minerals shall be specified by ordinance.

Article 2. Minerals not extracted, mineral refuse and slag shall be the property of the state.

Article 3. Any person desiring to engage in mining operations shall apply for permission to the minister of agriculture, commerce and industry, submitting a written application accurately specifying the kinds of minerals for which he intends to mine together with a plan of the intended mining claim.

Applicants for mining rights shall prove the existence in the claims applied for of the minerals for which they intend to mine.

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V

In administrative reforms Japan very properly began with an effort to cleanse the fountainhead of corruption under the old régime, choosing as its point of attack the imperial court. Here there was a clique of eunuchs, sorcerers, mediums and fortune-tellers who controlled appointments. By insisting upon

Article 4. The boundaries of mining claims shall be limited by straight surface lines extending vertically downward. Their area in the case of coal shall not be less than fifty thousand *tsubo*, and in the case of other minerals not less than five thousand *tsubo;* and in neither case shall it exceed a million *tsubo*. The latter limit may, however, be exceeded in case it is absolutely necessary for the protection of public mining interests or for the amalgamation or division of mining claims.

Article 8. In case there is more than one applicant for one and the same mining claim, permission shall be given according to the priority of the dates of receipt of the applications. As regards applications received on the same date, permission shall be given to the applicant whom the minister of agriculture, commerce and industry may consider to be most worthy.

Article 9. When the holder of a mining right desires to make an amalgamation or division or any other modification of his mining claims, he shall obtain the permission of the minister of agriculture, commerce and industry.

In case the location or configuration of a mining claim is detrimental to public mining interests, the minister of agriculture, commerce and industry shall order the necessary alterations.

Article 10. A mining right may be inherited, transferred or mortgaged.

The transfer of a mining right or the establishment of mortgage right against the same shall not be effective unless it has been registered at the department of agriculture, commerce and industry. (Amended by Law no. 11, 1908.)

Article 11. In case the holder of a mining right does not carry on operations properly or when his method of work is considered to involve danger or to be injurious to public interests, the minister of agriculture, commerce and industry shall order the required improvement or precautionary measures or the suspension of operations.

Article 12. The minister of agriculture, commerce and industry may revoke the permission to carry on mining operations in the following cases:

(*a*) When it is discovered that the permission was obtained by fraudulent means or granted by mistake.

(*b*) When work has been stopped for one year or upward without adequate reason, or when work has not been commenced within one year from the date when permission was obtained.

(*c*) (Struck out by Law no. 11, 1908.)

(*d*) When the mining operations are considered to be injurious to public interests.

(*e*) (Struck out by Law no. 11, 1908.)

(*f*) When the royalty or ground tax has not been paid within the specified period.

(*g*) (Struck out by Law no. 3, 1907.)

(*h*) When a fine has not been paid within the specified period.

Article 13. When permission to carry on mining operations has been revoked or

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large bribes, the clique caused the offices, both judicial and administrative, to be filled by the class of persons who were willing to pay most for them and who expected to resort to extortion to recoup themselves. While this clique continued in power, the whole system could not but be permeated with graft. To clear the court of these adventurers and conspirators, who

when a mining right has lapsed or when the working of a mine has been abandoned, such works or structures on the surface or underground as may be deemed by the minister of agriculture, commerce and industry to be necessary for the sake of safety shall not be removed.

Article 14. When the holders of mining rights or applicants therefor find it necessary to enter lands belonging to another person, for the purpose of surveying or examining, they may apply to the minister of agriculture, commerce and industry.

The proprietor of such land or any person having an interest therein may not refuse the request of persons possessing the above-mentioned official approval. But in case any damage is done by such survey or examination, due reparation shall be rendered by the responsible party.

Article 15. When the holder of a mining right finds it necessary to rent land for the purpose of carrying on mining operations, he may make demand to that end of the proprietor or persons having an interest in the land. He may not, however, use such land unless he pays the rent in advance every year.

When any damage has been caused to the proprietor of the land or persons having an interest therein by the use of such land, the holder of the mining right shall make due reparation.

Article 16. When the holder of a mining right has either the intention of using or has actually used such rented land for not less than three years, the proprietor thereof may demand that the holder of the mining right shall purchase the land.

In case the purchase of a portion of the land would make the remainder unfit for the purpose for which it was hitherto used, the owner may demand the purchase of the land in its entirety.

Article 17. In case the parties concerned fail to come to an agreement concerning the renting of land, the rate of rental, the purchase of land, the price thereof or the reparation for damages, mentioned in Article 14, Article 15 and Article 16, the matter may be referred to the minister of agriculture, commerce and industry for decision.

The amount of the costs involved in such decision and the party responsible therefor shall be determined by the minister of agriculture, commerce and industry.

Article 18. Persons presenting applications, petitions, or reports concerning mining, shall pay fees according to the schedule determined by ordinance.

Article 19. Holders of mining rights shall pay royalty and ground tax.

The amount of the royalty shall be one-hundredth of the market value of the gross output. The ground tax shall be at the rate of fifty *sen* per thousand *tsubo* per annum, any fraction of a thousand *tsubo* being calculated as a thousand *tsubo*.

For the first full year after the permission to mine has been obtained, the ground tax shall be paid at the rate of one-half of the above-mentioned amount.

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during the periods of disorder had gained the ear of the emperor, it was necessary to promulgate the "Palace Precincts Ordinance," excluding from the court all who did not have special passes showing that they had legitimate business to transact. Though these radical measures provoked a storm of protest in court circles, they were so manifestly necessary to the purification of the administration that open opposition to them soon ceased. It is not surprising that they should have caused protest from those against whom they were aimed. The surprising thing is that any measures looking to purification could have been made effective in the midst of so much rottenness. By the end of 1906 it looked as though the emperor had been rescued from the hands of his "friends." But early in 1907 the reactionary element again secured his ear and caused him to enter upon a line of conduct which resulted in his enforced abdication. Notwithstanding the opposition to all administrative reforms by the beneficiaries of the old régime, it was found possible to reorganize the police force, under the supervision of the Japanese resident-general; and by means of a special commission instituted by him, and acting under his direction, a reasonable measure of reform in local administration was effected. In order to lessen, if not stop, the selling of provincial offices, candidates were required to pass an examination for the purpose of determining whether or not they possessed the requisite qualifications. In other words, a large number of the administrative offices have been brought under civil-service-reform rules. Salaries have been increased, so that there is no longer the same excuse for extortion. Inquiries are being made by a local-administration investigation commission to ascertain whether or not conditions are such as to render advisable the introduction of a system of local autonomy. Guided by the same practical judgment which enabled them to win in their war with Russia and which has made them formidable competitors in the commercial world, the Japanese have permitted the character of the administrative reforms and the rapidity of their introduction to be determined by conditions rather than by theories. There was no doubt a temptation to tear things up root and branch, without delay; but this is

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rarely a wise course to pursue in the case of governmental institutions. Such institutions are a growth, not a ready-made product to be transferred from place to place without regard to the experiences of the peoples of whose life they are to form a part.

Corrupt as was the Korean administrative system, it was no worse than the judiciary. In fact the latter was controlled by the former, and both were equally subservient to the corrupt court "ring" through which their positions were secured. In the administration of justice the executive officials acted as judges. This condition of things made it imperatively necessary to redistribute the powers exercised by the departments of government, so as to make the judiciary independent of the administration. If there is anything that political experience has made clear, it is that an independent judiciary is necessary to the protection of individual liberty. Nor can a government be said to justify its existence when it fails to furnish guarantees for the protection of individual liberty and private rights.

Under the direction of the resident-general, there has been established in Korea a system of regular courts with an independent judiciary. The appointment of the judges is, in so far as possible, being raised above the plane of petty politics. The main courts are a court of appeals, called the Court of Cassation, and district courts, or courts of first instance, for the trial of civil and criminal cases. There are also special courts; among these are the trade port courts and the *Tenk-pyol-popuön*, a court for the trial of crimes committed by members of the imperial family. It will require time for these judicial reforms to take root and become a part of the life of the people, but undoubtedly substantial progress has been made.

The annexation of Korea, provided for in the convention of August 22, 1910, surprised no one who was at all familiar with the situation. The degree to which the maintenance of the forms of Korean sovereignty hampered the work of the Japanese was out of proportion to the value of such forms to the Koreans. Unless Japan were to abandon the task of governing Korea, the change was to be expected. To govern Korea for

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any length of time as England has governed Egypt would be exceedingly difficult, and long persistence in this attempt would, in my opinion, have been unwise. I am inclined to believe that most persons who have given careful thought to the subject will agree with me in saying that more has been lost than gained by England's delay in annexing Egypt.

To the annexation of Korea the other powers have raised no objection on political grounds. And Japan has forestalled objection on commercial grounds by providing that the open door to trade in Korea shall be maintained for ten years, and that for a like period the ships of all nations may engage in the coasting trade of Korea and in the trade between Japan and Korea. After the expiration of that period these matters will be arranged by treaty. In the Anglo-Japanese treaty of 1905, in which England concedes to Japan a free hand in Korea, Japan recognizes "the principle of equal opportunity for commerce and industry of all nations."

The task which Japan has undertaken is a serious one, one in which her motives and methods will be subjected to the severest criticism, one which requires infinite patience and practical common-sense. She has thus far exhibited these qualities in a high degree. If her future achievements fulfill the promise of success contained in her achievements thus far, it is not certain that Europe and America will not have something to learn from her methods. They should at least not unnecessarily hamper her progress by insisting that her action shall conform to their dogmatic notions as to the superiority of the Caucasians and their institutions.

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THE PROMISE OF AMERICAN LIFE[1]

THE promise which America has rather boastfully made to the world is nothing less than an economic and political millennium —a perfected race living under a perfected economic and political democracy in a land of unlimited potentialities. Mr. Croly evidently thinks that this large promise has, in a measure, been fulfilled, because America does offer its people more of the good things of this world than any other land. But, as a result of certain defects in our political organization and some fundamental errors in our thinking, we have not only fallen short of our ideal, but we have failed to give it even that degree of approximate realization which we might and should have secured.

Our failure has resulted in part from our faulty and incomplete conception of nationality and democracy and their mutual relations. Nationality and democracy, now and forever, one and inseparable, is Mr. Croly's new battle-cry of enlightened patriotism. Nationality does not mean complete centralization of authority in the federal government. On page 274 the author says: "The process of nationalization in its application to American political organization means that political power shall be distributed among the central, state and municipal officials in such a manner that it can be efficiently and responsibly exerted in the interest of those affected by its action." In like manner democracy cannot be adequately defined as the rule of a majority or of the whole people. Democracy, Mr. Croly says, is that political organization which furthers liberty and inequality in so far as they make for human brotherhood (pages 207 *et seq.*). Liberty and equality tend each to destroy the other, unless and until they are harmonized by fraternity.

It will readily be conceded that liberty and equality are to a large degree antagonistic ideals. Liberty must be curtailed if any measure of equality of any kind is to be preserved. It is not desirable, however, so to curtail and hamper liberty that all men shall be absolutely equal, any more than it is desirable to throw equality to the winds, in order that all men shall be absolutely free. Only that degree of liberty and that degree of equality should be established and safeguarded by a

[1] Herbert Croly, The Promise of American Life. New York, The Macmillan Company, 1909.—468 pp.

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true democracy which will result in the highest social welfare. Such a democratic society will use rational means to bring about the desired measure of liberty and equality. No nationality can be perfect without democracy, as no democracy can be perfect without nationality. In so far as we have failed to unite the national idea and the democratic idea, we have failed to realize the possibilities of our political organization. Nationality and democracy as above conceived are the two halves of the perfect political sphere. Constructive reforms should have for their object the fitting-together of these two opposite hemispheres. Fraternity is the cement which alone can bind the halves together.

Hamilton, profound political philosopher though he was, had no faith in democracy. He and those whom he led succeeded in setting up a political system founded upon the national idea to the exclusion of the democratic idea. The federal government became, under his influence, a government of property, for property and by property. The popular distrust which overwhelmed him in his later years was deserved. Jefferson, on the contrary, believed in democracy but not at all in nationality. In correcting Hamilton's mistake he committed a much graver one; for he tried to uproot the national idea in order to make room for his democratic idea. He interpreted liberty as freedom from governmental restraint. He strove to attain the goal of communistic socialism by the highway leading to individualistic anarchy. Hamilton inaugurated a national policy of purpose; Jefferson stood for a policy of negation. The ship of state, caulked and pitched with the Jeffersonian Bill of Rights, flying at its masthead the Declaration of Independence and manned by good Republican seamen, had no need of chart, compass, sextant, rudder or favoring breeze. The ship was perfect as were the intentions of the crew. Let her drift, then; and because of the accumulated good intentions of the crew and of the officers elected by the crew to do their will, the good ship was bound soon or late to reach the Blessed Isles! The mistake of both Federalists and Republicans was in thinking that nationality and democracy were necessarily opposed, instead of recognizing them as supplementary to each other.

The republic as refounded by Jefferson, was to be a realization of the new revolutionary republic of heaven on earth. All varieties of liberty and equality—economic, political, civil, religious and moral—were to flourish spontaneously side by side in this happy state where all were sovereign and no one wielded sovereignty. Jefferson and his followers thought of liberty and equality as more or less synonymous. To do away with special privileges of any kind was to give the people both liberty and equality at one stroke. Proclaim liberty throughout the

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land, and equality would follow just as daylight results from the shining of the sun. Proclaiming liberty was to be the sole business of legislators and officials, the servants of the sovereign people. This was comfortable doctrine. It encouraged the elected servants of the people to proclaim eloquently and to do as little as possible, so as not to trample on the sacred rights of their sovereign masters. But, before this experiment in liberty and equality had been carried very far, it was discovered that the kind of equality which accompanied the proclamation of republican liberty was quite different from the original democratic ideal of equality. Economic and political liberty, instead of bringing economic and political equality, brought the most pronounced inequality. Jeffersonian equality came later to be interpreted as "equality before the law," or civil equality. Even "equality before the law" was from the beginning a most unequal kind of equality. Thus Jefferson's benevolent politico-economic theory of democracy broke down completely.

Mr. Croly is doubtless right in thinking that Jefferson's influence upon American life and thought has on the whole been pernicious; but he perhaps exaggerates both the influence and its perniciousness. The American social and political system had within it from the beginning the germs of discord and dissolution. Jefferson did not inoculate America with the virus of anti-nationalism. He did not create the sentiment of disunion; he only invented a way of manifesting that sentiment. His teaching was an effect rather than a cause of discord. Nor can the responsibility for the American habits of cheerfully disregarding all theory in practice and of attempting to carry out a great programless program be unloaded upon Jefferson. Our sparse population and vast resources enabled us to live without thought for the morrow, relying upon our national Bank of Destiny to honor all drafts at all times to any amount. Environment is mightier than man—even a masterful man, which Jefferson certainly was not. The course of American history would probably have run much the same had Jefferson never lived. The Fourth of July orator still pours out dutifully his annual libation upon the altar dedicated to Jeffersonian liberty and equality, but the words are not the private property of Mr. Jefferson; they are merely an American echo of the political cant existing in every democratic country. The author is scathing in his censure of Jefferson, and no American statesman is more open to criticism. But, after all, Jefferson was a statesman and not merely a politician of the ear-to-the-ground variety. He, at least, had common sense enough to disregard in time of stress some of his most nonsensical and impos-

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sible anti-nationalistic theories and to practice for a time a somewhat rigorous Hamiltonian nationalism. This, however, gives Mr. Croly ground for further censure. Jefferson, he says, gave his countrymen "a seductive example of triumphant intellectual dishonesty, and of the sacrifice of theory to practice, whenever such a sacrifice was convenient" (page 419). Neither Jefferson nor America, however, can claim any patent right to political hypocrisy.

Nothing shows the profound truth of the economic interpretation of history more conclusively than the political revolt led by Jackson and the subsequent dominance of the national Democratic party up to the Civil War. The Jacksonian Democrats continued to preach the Jeffersonian doctrines, but they practiced only so much of them as suited their convenience. They were nationalists in so far as the nation alone was able to deal with foreign enemies and to alleviate their economic discomforts. They at first favored national construction of internal improvements, because they needed roads and waterways for bringing their products to market. For like reasons they favored a federal bank, which loaned them funds at six per cent. A little later, they accepted the pronouncement of their leaders declaring such federal activities to be unconstitutional, on the assurance that the various states could perform these functions better than the central government. Their attitude toward the tariff was dictated, as was everything else, by their conception of local interests. They were persistent spoilsmen because they regarded public office as one of the good things of life, which a rightly constituted democracy was in duty bound to distribute impartially among the faithful. In the backwoods, all were equal in at least one respect, namely, in the desire to feed at the public crib.

The national Democratic party was merely an agglomeration, nation-wide in extent, of local factions, each seeing no farther than its township, county or state boundaries. The Whigs contributed nothing permanent to the political thought of the time, for their ideas were quite as circumscribed as were those of the Democrats. Mr. Croly evidently regards the middle period of American history as our dark ages. He sees nothing much therein but vacuity of mind and sterility of achievement. His strictures are in general well founded; but in pointing out the errors of this epoch, he has, perhaps, given the impression that virtue was dead, and that evil in all its various forms stalked unchidden through the land. In fact, this was the germinating time in our history. In this period the political and economic seeds planted by Jefferson and watered by Jackson sprang up and flourished

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luxuriantly. The character of our institutions became more manifest. The thinking and achievements of these years were quite as noteworthy as the thinking and achievements of any other epoch in our history. Even the futile and equivocal compromises of the Great Compromiser were not devoid of a certain kind of merit. They at least postponed the inevitable struggle to a day when the issues could be more clearly drawn, and they demonstrated the futility of compromise. In the meantime, the land overflowed with the milk and honey of prosperity. This deluge of prosperity was ascribed quite generally to the beneficient influence of the good Democratic doctrines of liberty tempered by slavery, and of equality tempered by tariff for revenue with a large margin of incidental protection. During this period were laid the foundations of many of the monopolies and special privileges from which we suffer today. We are now beginning to eat of the dry, bitter fruits of our too bountiful prosperity. America has ever suffered from prosperity more than from panics. While the average American was creating prosperity of the simple-hearted, horny-handed, sixteen-hours-per-diem variety, the shrewder citizens of the new Arcadia were unostentatiously possessing themselves of certain property rights, franchises *etc.*, and were securing certain legal interpretations which have since become enormously valuable. The manner in which we have converted our two billion acres of more or less habitable though uninhabited wilderness into a wilderness more or less inhabited though somewhat uninhabitable was crude and barbaric. Nevertheless there is nothing in all this "development" through appropriation, dissipation and destruction of natural resources to indicate that Americans possess more than their fair share of intellectual and moral depravity. Given the notions and habits of thought and action which the colonists brought from Europe and the conditions with which they were confronted in America, a colony of saints, philanthropists and reformers would have produced a polity differing scarcely at all from that of the United States. The reformers are wont to look back upon our past with rage. They bitterly regret that the Fathers did not conserve our patrimony by taking wise forethought, instead of squandering it in riotous "development." So might we regret the lack of foresight on the part of our simian ancestors in failing to preserve their tails, that we, their descendants, might therewith the more joyfully disport ourselves in the tree-tops. Our patrimony was no patrimony until it acquired value through use and scarcity. Some waste and destruction were unavoidable, if the western hemisphere was ever to be "civilized." The steps which have brought us into our present predicament of advanced civilization were for the most part inevitable.

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Mr. Croly ascribes many of our political and economic abuses to the fact that we have been governed by lawyers. Lawyers make, interpret and execute, or fail to execute, our laws. Many legislators, most executives and all judges are trained lawyers. Lawyers have built our constitutions and they have interpreted them, oftentimes into innocuous desuetude. When a measure comes up for consideration, the first question asked is, not whether it is wise or expedient, but whether it is constitutional. The training of the lawyer unfits him for the progressive adaptation of the law to new conditions.

> Whatever his qualifications have been for the task, and they have, perhaps, been overestimated, they are no longer as substantial as they were. Not only has the average lawyer become a less representative citizen, but a strictly legal training has become a less desirable preparation for the candid consideration of contemporary political problems [page 134].

Continual quibbling over the meaning of the Constitution has undermined our moral character to such an extent that even the robust reformer is wont to refer to his most hopefully unconstitutional reform as a restoration of the sacred Constitution to its original perfection. The reformers, Mr. Croly writes,

> have eschewed the tradition of partisan conformity in reference to controverted political questions, but they have not eschewed a still more insidious tradition of conformity—the tradition that a patriotic American citizen must not in his political thinking go beyond the formulas consecrated in the sacred American writings. They adhere to the stupefying rule that the good Fathers of the Republic relieved their children from the necessity of vigorous independent or consistent thinking on political matters—that it is the duty of their loyal children to repeat the sacred words and then await a miraculous consummation of individual and social prosperity. Accordingly, all the leading reformers begin by piously reiterating certain phrases about equal rights for all and special privileges for none and of government of the people, by the people and for the people [page 150].

However, most reformers and many standpatters now recognize the true character of the Constitution as the palladium of vested interests. Reformers still speak of restoring to the people their inherent, inalienable rights guaranteed by the Constitution; but they know better.

Much of our legal progress has been made possible only by methods of interpreting the Constitution which seem to many to amount to a circumvention of the fundamental law. This Mr. Croly would perhaps regard as hypocrisy. If it be such, it is a worthy sort of hypocrisy.

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Handicapped by a Constitution whose words can be changed only by agitation verging on armed revolution, the only recourse of the reformers is to cause new meanings to be interpreted into the old words. If the judges of the Supreme Court had not in more than one instance virtually amended the Constitution, the Union would have been broken up long ago. The chief trouble with our written Constitution is that we must wait until the high-priests who wait on the ark of the covenant have received a new prophetic inspiration, before we can know what the language of the document means. Supreme Court justices are generally old men when appointed. Their economic and political theories belong to a past generation. Their interpretations of the sacred writing are sometimes out of harmony with the spirit of the times, as in the case of the income-tax decision of 1894, the creation of the doctrine of judicial review in the matter of railroad rate regulation by legislative authority, and the extension of the anti-trust law of 1890 to all combinations in restraint of interstate trade. The courts are slow to recognize their fallibility and yet slower to correct their mistakes, so that the community must suffer for twenty or fifty years before redress can be secured.

Reforms are necessary if the people are to be saved from the consequences of their own carelessness or senselessness. Reform movements are in general but mildly successful, because the reformers erroneously assume that man is wholly and uninterruptedly a rational animal, whereas all experience has shown that he is only partially and occasionally rational. Most of the time he is emotional and unreasonable to a degree. A large number of men traverse the road from the cradle to the grave all guiltless of an intellectual process more complicated in character than is demanded by the acts necessary to maintain existence. They do things for love or hate, from habit or custom, from instinct or necessity, but seldom or never for a reason that can be called rational. And yet most reformers hope to change the established order by showing its inherent absurdity or injustice. The anti-slavery reformers proved over and over again that slavery was a stupendous economic blunder, but the appeal which finally ridded the country of this dark evil was an appeal to the emotions, not to the reason. The tariff reformers have been busily engaged from the beginning of our history in proving the impossibility of a nation's taxing itself into opulence; but so far as their appeals have aroused any response in the thoughts of the people they have been directed to the emotions and the prejudices. The strength of the protective doctrine lies in the unreasoning belief of the many that higher prices mean greater pros-

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perity and wealth. High prices often mean prosperity to individuals: the fallacy lies in the assumption that whatever benefits individuals consequently benefits the nation. Abuses have grown up and will continue to grow up so long as the majority of the people cling to the simple faith that the individual is greater than the state, and that folly committed in the name of liberty and equality may increase the happiness of the free and equal. Nearly every young American believes himself an incipient Jay Gould or John D. Rockefeller. He would rather play in a game where the prizes are few and big, because he feels sure that his superior merit, skill, system or industry will win a prize. If loaded dice are allowed, so much the better, for the chances of "success" for the "bold and enterprising" are thereby increased. The sweet reasonableness of the law of probability does not impress him. The likelihood that the old gamesters will have secured all the dice, or will play against him with a superior kind of dice, does not occur to him. Because of the wide dissemination of the gambling instinct, it may be confidently predicted that the reformer will not be without occupation in America for some time to come. Mr. Croly, in common with other writers on our polity, seems to assume that reformation of abuses will perforce follow exposure of abuses.

With a conception of nationality that allows the fostering of privilege at the expense of democracy, a spirit of democracy that is opposed to nationality, and a subjection to the tyranny of written constitutions and judicial interpretation that antagonizes in turn both nationality and democracy whenever either opposes or limits private rights, it is small wonder that we dwell in a continuous state of political check and balance tempered by popular revolt against the constituted authorities. The question which comes eternally to the minds of all is: What are we to do about it?

Mr. Croly's answer to the above question is not likely to arouse immediate and enthusiastic approbation. The antidote for the evils of economic privilege transmuted into vested right—evils which are made more secure by our doctrine of theoretical equality before the law—is, in his opinion, a frank policy of constructive discrimination. This seems, at first glance, to give over the fight for economic and political democracy. On further consideration, however, it seems rather a sensible proposal, which is perhaps its principal weakness. The reconstructed nation will discriminate against those individuals, institutions and practices that tend to injure it and it will discriminate in favor of those individuals, institutions and practices that make for welfare. The truly national-democratic state, says Mr. Croly, can not be impartial. It

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must be either for or against social tendencies. Expressed in such general terms, the program of constructive discrimination will meet with no violent opposition. When it comes, however, to drawing up a list of harmful things to be discriminated against and beneficent things to be discriminated for, differences of opinion will emerge. It will be a long time before the American people will approve of discrimination against the small, inefficient producer and in favor of the large, efficient corporation, although this is the obvious and intelligent course to follow. The state should favor combination by allowing those who combine to reap all the legitimate advantages due to large-scale production, but it should prevent them from reaping extortionate monopoly profits. Mr. Croly objects to the "commission" form of government supervision on the ground that it divides responsibility for the policy of the industries so controlled. There is some force in this objection; but until the state is ready to take over an industry entirely, the separation of ownership and responsibility must exist. No property right is absolute. Every business is subject to the sovereign control of the state. That control may be and often is best exercised through a commission, which can hold the private undertakers to their obligations toward the public better than can the district attorney's office assisted or handicapped by the regularly constituted courts. Mr. Croly is not frightened by the cry of socialism. If private individuals or corporations conduct their business in a way inimical to the public good, he favors public management of those industries. Enterprises can not, however, be divided offhand into those which may advantageously be left in private hands and those which require public management. It would be calamitous, moreover, with the present standards of official competence, not to speak of honesty, for any one of the states to attempt to take over its public-service corporations. It would be even more calamitous to allow the public-service companies to proceed unregulated save through the ordinary legal machinery for the redress of abuses. The only way to bring public-service corporations under any effective public control is through the medium of a public-utilities commission. The corporations are beginning to see this and to recognize that the commissions are all that stand between them and annihilation. Furthermore, the control exercised by the various public-utilities commissions is, on the whole, efficient and salutary. Enormous benefits to the public have resulted, and the complete socialization of these industries has been indefinitely postponed. In this case, delay is of the greatest value.

Discrimination in favor of trade unions will appear to many as a destructive rather than a constructive policy. When the relative weakness

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of the unions is considered, it sounds preposterous to characterize the unorganized laborer, as Mr. Croly does, as an industrial derelict. Nevertheless it would be, in the reviewer's opinion, better if the state recognized the soundness of this view and obliged every laboring man to belong to a union, discriminating against non-unionism to the extent of actually prohibiting it. Collective bargaining, the standard day and the standard wage would then receive legal recognition, as is now the case in Australasia. Strikes would not be prevented, but they would be reduced to a minimum. Wages and hours of labor would not be fixed by inflexible statutory enactment, but by bargaining between employers and employees on approximately equal terms. The wages, hours and conditions of labor would of course vary from time to time and from place to place. Such a policy is much more radical than Mr. Croly proposes; but in the reviewer's opinion it would prove much more effective. Undoubtedly, however, it would be more difficult to devise a program of constructive discrimination in the case of trade unions than in the case of combinations of capital.

"Any genuine measure of economic or political reform," Mr. Croly says, "will, of course, give certain individuals better opportunities than those they have been recently enjoying, but it will reach this result only by depriving other individuals of advantages which they have earned" (page 192). It is not easy to see by what exercise of industry or other virtue the possessors of certain franchises or other similar privileges have earned the advantages conferred by possession. To take away these privileges would, no doubt, cause pain to those dispossessed, but it can not properly be called depriving them of advantages which they have earned. It is not, really, discrimination at all, but the suppression of discrimination. This is what Mr. Roosevelt and others mean, in part, by the establishment of the "square deal," which Mr. Croly condemns as a pious fraud. His understanding of this phrase is rather peculiar. In his mind, the "square deal" would discriminate against efficiency by protecting the small producer against his bigger and more efficient rival, and by obliging, or at least allowing, everybody in turn to serve in public office regardless of fitness. Everybody would be given an equal chance at everything. Dishonesty and inefficiency would be safeguarded from attack. Such a conception of the "square deal" would be something worse than a pious fraud. Truly conceived, the "square deal" would give to every individual and to every institution full and free opportunity to prove his or its worth. There would be no handicaps in the contest, except such as the competitors bring with them by reason of unequal capacity and

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character, and the rewards would be distributed discriminatingly, according to merit. Such discrimination is exactly what Mr. Croly says he wants. No one thinks of the "square deal" as giving inefficiency and dishonesty the same opportunity that is offered to ability and rectitude. Such a definition is absurd; and yet some such definition must be lurking in Mr. Croly's mind when he refers to the "square deal" as a pious fraud. Of course the deal cannot be squared without serious diminution of the legal protection now accorded to certain individual interests. The obvious criticism of the present-day square dealers is that their program can not accomplish all they claim for it. Gross inequalities of a pernicious kind would be perpetuated by their proposed reforms. Their proposals, however, mark a step toward equality of opportunity, and quite as long a step as the American people is capable of taking at this time.

No one realizes more keenly than Mr. Croly the futility of attempting to regenerate society by legislative enactment. All reform, in last analysis, is a reform in education. For the ten-thousandth time we read that the proposed reforms are to be consummated by the slow process of training. When we stop to consider that the slow process of training is chiefly responsible for the evils we now suffer, our faith in reformation through education is not strengthened. The doctrine that indiscriminate reading, writing and arithmetic promote good citizenship is the corner-stone of our educational fabric. No doubt, if reform is to come, proper education must precede, accompany and follow it, but it can by no means be assumed that the people will consent to be properly and profitably educated at their own expense. It is generally admitted that our schools do not accomplish results at all proportionate to their cost in money, time and health. Can they be made really efficient? Before we can hope to achieve educational reform, the people must be educated to desire both education and reform. A miracle must be wrought: system and sense must be infused into our educational chaos; trained men and women must be turned out by our schools and colleges, instead of learned ignoramuses and helpless all-round incapables.

No amount of education can abolish the need for leadership either in politics, economics or ethics. It is frequently said that education should train men to think independently, *i. e.* differently from everybody else, as if the goal of education were the development of intellectual anarchy. Only a small minority of men are capable of original thought. It would be better if the majority of men were trained to select with good judgment the leaders who should do the political think-

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ing for the community. The people select their political leaders now, but they do it blindly and unintelligently. The result is the "boss." He is the embodiment of the popular demand for leadership. Mr. Croly proposes to exterminate the unofficial boss by substituting for him an official boss chosen by popular vote. Before this substitution can accomplish any desirable change in our political machines, the people themselves will need to be reformed. There is no inherent merit in securing a plurality of unintelligent votes; an elected boss might be as bad as the self-made boss. Again the whole reform resolves itself into a problem of education. If the people are willing to be educated properly and if they can get the proper education, all things reformatory are possible.

Every complacent American who has the capacity, but has never acquired the habit, of thought should be obliged to read Mr. Croly's book. It will do him good, even though he should dissent from every conclusion and disapprove every constructive reform therein set forth. Before all else, the average American must be startled out of his stupefying faith in the divinely ordained destiny of his country. The policy of drift cannot possibly bring the ship of state to any desirable haven, and the sooner the crew are made aware of this, the better. Even confirmed reformers should derive much benefit from this book. All Mr. Croly's proposed reforms are suggestive and some are decidedly original. He has presented a fair, philosophical and readable criticism of accepted American traditions.

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REVIEWS

Gold Prices and Wages under the Greenback Standard. By WESLEY C. MITCHELL. University of California Publications in Economics: Volume I. Berkeley, The University Press, 1908.—627 pp.

In this volume Dr. Mitchell has brought together a mass of material collected for the purpose of continuing to the resumption of specie payments, in 1879, his *History of the Greenbacks*. Other duties having turned him aside from that task, he has given to economic students the opportunity to utilize his material. The book consists mainly of statistical tables of prices and wages, there being only about fifty pages of text.

As Dr. Mitchell says, on page 250, the volume does not pretend to present material sufficient for an adequate account of prices between the suspension and resumption of specie payments, but merely to furnish the statistical apparatus necessary for a discussion of (1) "the relations between the fluctuations of the specie value of the greenback dollar, as represented by the price of gold, and the fluctuations of prices at wholesale; and (2) the relations between the fluctuations in prices at wholesale and the fluctuations in prices at retail, cost of living and prices of labor." For these two purposes the book certainly contains all the necessary data, and upon its arrangement and analysis the author must have expended an immense amount of labor. For his statistics with regard to prices and wages he relies mainly upon the Weeks reports in the Tenth Census and the exhibits of the Aldrich report. For the greenback prices of gold he relies upon the gold exchange quotations as compiled and published by Mersereau, upon the financial journals of the time and upon the statistical reports of the New York Chamber of Commerce. The appendix, among other statistics, presents the daily highest and lowest premium on gold and prices of greenbacks in gold, 1862 to 1878; also detailed information with regard to wholesale and retail prices and wages during the same period, the wholesale prices being compared with those of England and Germany.

Not being satisfied with the tables of relative prices and wages which Professor Falkner compiled from the material in the Aldrich report, Dr. Mitchell has prepared tables in an entirely new manner.

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He discards the arithmetical average and uses in its stead a median, which he obtains by arranging the series of quotations in ten groups, the lowest quotations being in the first group, the next lowest in the second group and so on. The dividing points in these groups he calls deciles, and the fifth decile is the median. Thus, if there were 100 quotations, the tenth from the bottom would be the first decile, and the twentieth, the second decile. The tables of deciles, which are compiled not only from the Aldrich report, but also from the series of Sauerbeck and Soetbeer, make possible the comparison of commodities grouped according to the extent of their fluctuations in price.

The text is concerned principally with the explanation of the various tables and with the statement of certain generalizations which they obviously justify. Wholesale prices advanced more slowly than the greenback price of gold during the war and fell more slowly after the war, remaining above the price of gold continuously from 1865 to 1878. "The retail prices lagged behind wholesale prices, the cost of living behind retail prices and wages behind cost of living." In his discussion of the interrelation between wholesale and retail prices and the wages of labor, Dr. Mitchell writes very clearly and is evidently free from the bias of preconceived opinion; but when he treats of the relation between commodity prices and the gold premium he seems unhappily to be hunting for statistics to support his favorite hypothesis, namely, that the controlling factor in the making of commodity prices was the premium on gold. For example, in his brief analysis of the changes in commodity prices (page 26) he remarks, with regard to the upward movement in 1862, that the chief cause was probably the "advance in the premium on gold." Again on the same page he says that "the financial successes of the spring of 1863 and the military successes of July caused a great appreciation in the value attributed to the government's notes and produced a slight fall in prices." Dr. Mitchell does not establish his hypothesis and probably did not intend to do so in this volume. He takes its truth for granted, and whenever it is not in accord with his statistics he introduces "economic friction" as a sufficient explanation. His tables of deciles furnish many discrepancies between gold and commodity prices which must puzzle any investigator who relies implicitly on the truth of his hypothesis. For example, immediately after the close of the war the prices of commodities (Dr. Mitchell's median) rose from 158 in July, 1865, to 175 in October, and to 182 in January, 1866. The average quotations of gold for these months were 142, 145.5 and 140.1. The remarkable advance of commodity prices may have been due to an expansion of credit following

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the close of the war, but it certainly was not due to any "decline in the community's valuation of the irredeemable paper dollar in which prices were quoted." Again the premium on gold was higher in January, 1876, than in January, 1871, for the reason, as Dr. Mitchell says, that "the prospect of the resumption of specie payments seemed as remote in 1875 as it had seemed in 1870." Nevertheless during this period commodity prices declined from 133 to 117.

As Dr. Mitchell points out, the prices of staple articles of export and import must have tended to follow fluctuations in the premium on gold, but only in so far as our trade was with countries on the gold standard. Fluctuations in the ratio of silver to greenbacks exerted, of course, a similar influence upon the prices of goods exported to or imported from countries on the silver standard. For that matter, even at the present time our prices are subject to foreign influences of the same sort, for some of the countries with which we trade are on the silver standard and others are using irredeemable paper. If a German or English economist should make a close study of commodity prices in Europe during the period 1862–79, it is quite possible that he would account for many fluctuations by reference to the remarkable variability of American prices in terms of greenbacks.

It is undoubtedly true that the premium on gold expressed the community's best opinion with regard to the future appreciation or depreciation of the greenback. May it not also be true that the value of the greenback in goods, as shown by the general level of prices, was determined more by the demand for and supply of greenbacks as money than by changes in the gold premium? Is it not conceivable, indeed, that if Congress had refused either to provide for the redemption of greenbacks or to increase their quantity, that the value of greenbacks in goods might have increased until gold would have been at a discount? In fact, is it not quite possible that the premium on gold, instead of being a controlling factor in the making of commodity prices, was itself an effect of the very forces which determined the value of the greenback, registering expert opinion as to the outlook, not for greenback-redemption, but for greenback-appreciation? The hypothesis underlying these questions, namely, that the value of the greenback throughout most of the period was mainly due to the demand for and supply of it as money, should not be ignored by any student who in the future seeks to interpret the statistics in this volume.

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Die indische Währungsreform. By OTTO HEYN. Berlin, J. Guttentag, 1903.—ix, 375 pp.

Die indische Währungsreform seit 1893. By M. BOTHE. Stuttgart and Berlin, J. G. Cotta's Nachfolger, 1904.—xii, 291 pp.

For the student of monetary science there is perhaps no more illuminating chapter in monetary history than the experience of India during the last decade of the nineteenth century. These two monographs are carefully prepared and critical studies of this experience.

The first is by a well-known writer on currency problems, author of the *Theorie des wirtschaftlichen Werts* (Berlin, 1899). It was written under the auspices of the Verein zum Schutz der deutschen Goldwährung.

The first chapter is devoted to a brief historical survey, covering the period 1835–1899, and to a description of Indian Council bills and their workings. This description of one of the most important factors in the Indian currency system is the best the reviewer has seen.

The second chapter contains a brief examination of the causes leading to the reform and of the various plans of reform suggested and a description of the plan adopted. Among the causes leading to the reform are discussed: the growing financial burdens of the Indian government, arising from its heavy fixed charges payable in gold at a time when the gold value of the silver rupee was rapidly declining; the impediments to trade with gold-standard countries caused by a widely fluctuating exchange; and the losses and inconveniences experienced by British officials and employees whose salaries were paid in rupees and were then transferred in part to the home land at a low and falling exchange. A very brief and inadequate examination is given to the Probyn and Lindsay schemes for securing a gold standard without gold coin in circulation. The latter of these has since been introduced with success in the Philippines, and has been followed recently to a considerable extent in India itself.

The author's argument (pages 57–59) to prove that, although by a contraction of the currency a fall in prices of commodities may be brought about, through restrictions of credit, liquidations and bankruptcies, the value of the local unit in terms of gold or in terms of foreign monetary units can not be increased by any such means, is inconclusive. It is also contradictory to the recent experiences of the Straits Settlement and, as the reviewer believes, to those of India itself. When the unit of value in a country appreciates or depreciates, the

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prices of different classes of things are affected very unevenly, as Dr. Heyn elsewhere points out. There are, moreover, so many other factors influencing the price of commodities that it is impossible to measure accurately the influence of changes in the value of the money unit *per se*. This applies to variations in the price of gold and in the gold exchanges. If however prices of non-exported products fall in India while gold prices of Indian exports remain constant abroad, and if London exchange fails to rise, the increased relative profits realizable on export trade and the diminished profits on import trade would soon so stimulate the one and handicap the other as to bring about an adjustment of the exchange rate and of the price of gold to the new price level. The contention (page 59) that relative contraction did not effect the advance in exchange, and that it was entirely superfluous, is an example of the attitude of many disbelievers in the quantity theory, who make labored arguments to explain by indirect causes changes in the value of money which might readily be explained by the application to money of the law of demand and supply which they apply to everything else.

The fourth chapter, treating of the economic significance of the reform for India, and comprising half of the monograph, is clearly the most valuable. Here the author discusses such topics as the influence of the reform on the finances of the government of India; its results for the capital market, particularly with reference to the investment of foreign capital in India and to the rate of interest; its influence upon prices, wages and the importation of silver; the depreciation of hoards; and the cost of carrying through the reform. The most important topic of the chapter is the influence of the reform upon India's foreign trade. The export trade and the import trade are considered separately, both for gold-standard countries and for silver-standard countries, and in each case for certain important commodities. In general, the author concludes (page 109) that "for Indian producers, the currency reform has proven a very serious disadvantage. The export trade has been handicapped, the import trade encouraged, and the competing power (*Konkurrenzfähigkeit*) of Indian producers weakened in all markets as compared with the producers of other countries." At the same time, the trade in different commodities has been affected very differently, and each important commodity must be studied by itself. "The effect", he says,

> is a continuing one. A fall in exchange works like a continued export bounty or a continued protective tariff, and a rise in exchange works in the

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opposite way. The ruling opinion that the effect is only a temporary one, since in the course of time all prices and wages must conform to the depreciated or appreciated unit of value is . . . false. It is only correct to say that in the course of time an adjustment to the changed relations takes place, exactly as it would have taken place if effective export bounties had been paid and effective protective duties introduced, or if previous export bounties and import duties had been raised [page 110].

While undoubtedly any considerable alteration in the unit of value has some permanent results[1] in the alteration of the prices of commodities relative to each other and in "real wages," Dr. Heyn's analogy in comparing the results with those of export bounties or protective duties seems to the reviewer to be of doubtful validity.

In the sixth chapter Dr. Heyn briefly considers the equities of the Indian currency reform. He believes that in the public interest the government was justified in closing the mints and in fixing the gold value of the rupee, without making specific provisions for the adjustment of preëxisting debts, but that it was not justified in raising the value of the rupee to 16*d*. when a unit of 15*d*. would have been clearly more equitable and less disturbing to preëxisting contracts and to established business relations.

The last chapter considers the significance for Europe of the Indian currency reform, and gives a well-balanced treatment of its results for European import and export trade, for the European money market and for the silver market.

Again and again throughout the work Dr. Heyn emphasizes the inadequacy of India's gold reserve, and he draws vivid pictures of the great calamity that may befall India if the reserve is not greatly strengthened (pages 62–69 and 85–88). He believes that the reserve should be doubled and that money should be borrowed for the purpose (page 88). Since the book was written (1903) the gold reserve has been greatly increased through the presentation of gold for rupees in response to the growth of trade, and very recently (1907–08) the Indian currency system has successfully met a very heavy strain[2] upon its gold reserve.

Dr. Bothe's dissertation is intended to supplement the monograph by Karl Ellsttätter on *Die indische Silberwährung*, which appeared in the same series. The data used are drawn almost exclusively from the official reports of the Indian and the English governments, and the

[1] *Cf.* Kemmerer, Money and Prices (second ed.), pp. 51, 52.

[2] *Cf. Gazette of India*, Extraordinary, March 22, 1909.

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treatment takes the form of a critical—one might almost say hypercritical—historical narrative.

An introductory chapter of 50 pages is devoted to an excellent historical sketch of the economic, financial and monetary conditions in India preceding, and leading to, the closing of the Indian mints on June 26, 1893. Particular attention is given to the financial difficulties of the Indian government resulting from the declining and fluctuating gold value of silver—difficulties which were primarily responsible for the Indian currency reform. The author shows how the burdens imposed upon India's finances were continually increasing, how difficult it was to increase local taxes, how proposals for increases in the revenue tariff were complicated by the opposition of special interests in the home land, particularly the cotton-manufacturing interests (pages 37, 38), and how the expected repeal of the Sherman silver-purchase act in the United States was threatening an even greater depreciation in the gold value of the rupee. The plan adopted by the administration for fixing exchange is then briefly considered.

Chapter 1, following the introduction, is the longest (113 pages) and best chapter of the monograph. It deals with the transitional period from the closing of the mints to the constitution of the Indian Currency Committee of 1898, during which time the rupee was changed from a silver-standard coin of a varying gold value to a gold-standard coin with a gold par of 16*d*. The difficulties and hardships of this transitional period are vividly pictured, *e. g.*, the failure of the government to establish a 16*d*. par in 1893; the decline in sterling exchange during the first two years of the period; the lack of confidence in the reform, both in England and in India, and consequent inhibitions upon the flow of capital to India; the disrupting of the exchange parity with silver-standard countries, unaccompanied by the attainment of such a parity with gold-standard countries, and the consequent appearance of greater fluctuations and greater uncertainty in exchange than had existed even under the preceding silver standard; the strained money market of the years 1896–98; the poor harvest of 1896; the plague in Bombay; the severe famine of 1897, and the great hardships resulting during the famine from the inability of the natives to secure from the mints rupees for their silver ornaments at the former rate of 165 grains of silver (plus a small coinage charge) to the rupee. These phenomena are all described clearly and with much detail.

The hardships of this transitional period kept alive the agitation for a return to the silver standard; and throughout the period many persisted in the hope that something might still be accomplished in the

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way of international bimetallism. England's attitude, however, toward joining in any international agreement and the failure of the Wolcott Commission of 1897 killed this hope. The 16*d.* gold par was not reached until January 12, 1898; but on September 16, 1897, the Indian government took a positive stand against reopening the mints (pages 137–142).

The second chapter is devoted to a critical account of the work of the Fowler Currency Committee of 1898, of the various plans proposed and of the arguments advanced in their support. The result of the committee's work, which was the act of September 15, 1899, made no important changes in the situation. In the third chapter are discussed the workings of this act and the developments with reference to currency and banking matters in India down to 1904.

The monograph ends with a brief chapter summarizing the author's conclusions. He believes that the reform would have been effected promptly and economically had the Indian government floated a loan of £10,000,000, before the closing of the mints in 1893, and used the proceeds to form a gold reserve, in much the same manner as the Philippine government has since done; and he believes that a gold par of 15*d.* if adopted in 1893 would have been much more equitable than that of 16*d.*

The plans adopted, he says, as well as the most favored of the discarded plans, such as the Lindsay plan and the Probyn plan, were based upon the Ricardian quantity theory of money, and their defects he attributes largely to the fallacy of the quantity theory. He gives that theory a narrower interpretation than would its present-day adherents, and he is certain that because of their "false theoretical views" the Indian administration, at least for the time being, would neglect to take energetic measures with promptness in case of emergency (page 279) —a prophecy which subsequent experience (in 1907 and 1908) does not seem to have substantiated.

Dr. Bothe's contention that gold was the measure of value in India from 1893 to 1899, like the assertion occasionally made in this country that gold was the measure of value during the greenback period (1862–79), appears to the reviewer untenable. The author says:

Wertmesser kann nur ein Stoff sein, der die Eigenschaft des zu messenden Stoffes hat, dem Wert beigelegt wird, und zwar muss dieses Werturteil auf der Meinung von stofflichen Eigenschaften des als Wertmesser dienenden Stoffes beruhen. Die Rupie bekam nun nach 1893 einen höheren Wert als den ihres Stoffes, folglich konnte dieser Stoff nicht mehr Wertmesser sein, sondern derjenige Stoff wurde Wertmesser, in dem der jeweilige Grad

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der Werterhöhung der Rupie über ihren Metallwert gemessen wurde, d. h. das Gold [page 207].

The rupee had value between 1893 and 1899 not because of the government's declaration of a provisional 16*d.* par, nor because people in gold-standard countries or from gold-standard countries were in the habit of measuring its value in terms of gold. Doubtless people in silver-standard countries measured its value in terms of silver, as that value found expression in the silver exchanges. It had value for the same reason that everything else has value, namely, because of the law of demand and supply. The rupee was the common medium of exchange by which nearly all transactions were effected and in which prices were expressed, and in being so it was *ipso facto* the measure of value.

All in all, Dr. Bothe's book is a good critical history of the Indian currency reform and well worth careful study.

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Die Fugger in Rom, 1495–1523. Mit Studien zur Geschichte des kirchlichen Finanzwesens jener Zeit. By ALOYS SCHULTE. Leipzig, Duncker and Humblot, 1904. Two volumes: xii, 308, 234 pp.

The reviewer must make apology for so tardy a notice of an important work. The author, however, can certainly not be accused of dilatoriness. On the contrary, he has shown extraordinary energy, almost feverish haste, in the collection of materials and in the writing of his book. In his *Geschichte des mittelalterlichen Handels und Verkehrs zwischen Westdeutschland und Italien* he had remarked that the Roman archives would some day throw new light on the activity of the great banking firm of the Fuggers; and it was his intention to incorporate in a second edition of that work some information from Roman sources on this subject. But his collection of notes became so voluminous, and some of his discoveries seemed of such importance, that he decided to publish at once the present two volumes. Between November, 1902, and February, 1904, despite his duties as head of the German Institute at Rome and the interruption caused by his entrance upon a professorship at Bonn and by various journeys, he had searched through the hundreds of manuscript volumes in the Vatican library enumerated in appendix i, he had spent some hurried hours in the Roman state archives, and he had examined fifteen German

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archives, while some eight or nine leading numismatic collections had contributed to a chapter of his work. When, in addition, we learn from the preface that the author was led by his researches far beyond his own specialty of economic history into fields hitherto uncultivated by him, we cannot be surprised that, notwithstanding his unconcealed industry, competent critics like Göller[1] have tempered their praise with regret at omissions which more thorough research would have supplied. But while, if Schulte had enjoyed more leisure, his book would doubtless have benefited both in substance and in form, it remains a veritable *tour de force*, and in his rapid passage he has scattered with a free hand valuable suggestions for further investigation.

In the first volume there may be found discussion and information, mingling old and new, on papal finance, with some items of papal accounts from the pontificate of Alexander VI to that of Clement VII; there is much on the sale of indulgences, with the new details of the notorious Mainz-Magdeburg indulgence, the prelude of the Reformation, the utilization of which led to a controversy in the German press (the *Fall Schulte*) even before the appearance of the book; there are numerous scattered and often illuminating notices on personalities of the Roman Curia during that eventful period, on processions and Roman topography, on altar pieces, artists and coins, on the new posts and the rate of interest, on Roman scandals and European politics. Eleven appendices do not remove the discursive effect of the volume.

Running through all this interesting miscellany is the thread of Fugger finance, beginning, however, not with the first appearance of members of the family in Rome in 1476, but with the permanent establishment of their agency, at first under a Florentine factor, about 1495. The Fuggers soon displaced the Italian bankers in nearly all the papal business of central and northern Europe. Between 1495 and 1520 there were changes of bishops in 110 of the 115 bishoprics of Germany, Poland, Hungary and Scandinavia, and in 88 cases we find the Fuggers concerned with the payment of the *servitia* regularly due at Rome on such occasions. They assisted financially in the raising of the papal Swiss guard; they speculated in benefices and indulgences, and participated in the abuses which reigned particularly in the Camera of Leo X. Schulte closes with an account of the peculiar position of the Fugger house during the sack of Rome, when it acted as a friend to both sides, on the one hand coining money for the imprisoned pope and on the other receiving deposits of money and valuables from the German despoilers of Rome.

[1] *Göttinger Gelehrter Anzeiger*, vol. 167.

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The chief interest of the book centers in the transactions attending the sale of indulgences, and especially of that indulgence which was to reimburse Albert of Brandenburg, the young archbishop of Mainz, and which succeeded only in arousing the ire of Luther and kindling the flame of the Reformation. Schulte, aided by new documents from the Magdeburg archives, has modified the long tradition according to which Albert sought the indulgence in order from its proceeds to repay to the Fuggers the money borrowed for his Mainz pallium. The truth seems to be that in addition to the usual payment of the *servitia* at Rome a sum of 10,000 ducats was demanded by the high officials of the Camera, with the pope's connivance, for the unprecedented grant to Albert of the privilege of holding in plurality two archbishoprics and one bishopric, and that in order to raise money for this simoniacal bargain an indulgence was offered and rather reluctantly accepted. This indulgence was given on the terms more favorable to the pope (one-half of the net receipts instead of the usual one-third) which had recently come to be the practice in the German indulgences managed by the Fuggers. Schulte makes it clear that the financial administration of this indulgence precluded peculation on the part of the commissioners and preachers, and that, as Paulus had already stated, history has given too prominent aud discreditable a part to Tetzel. But for a study of the interesting questions concerning the financial results of this and other indulgences of the period the figures are inadequate. Particularly to be regretted is the absence of precise information as to the cost of collection. To judge from the figures given in the one instance of the indulgence granted in behalf of the Dominican church at Augsburg (page 160), it would appear that in other instances Schulte may have underrated this item. In any case he has shown that, whatever may have been the profits at an earlier period, the indulgences of the second decade of the sixteenth century were yielding diminishing returns, to the disappointment of those who sought them. The indulgence forced upon Albert of Brandenburg was a losing speculation, since at the most favorable estimate he recovered less than half of the 10,000 ducats paid in bribe-money at Rome. Not only did he outrage the growing moral sense of his countrymen and irritate the jealous territorial powers, but he committed a serious financial blunder. The various aspects of this pivotal episode are treated fully and dispassionately by Schulte. Indeed, his whole book admirably bears out the promise of his preface, to seek the objectivity all historians desire, even though they know its perfect attainment to be impossible.

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Economics of Business. By EDWARD S. MEADE. Chicago and New York, De Bower-Elliott Company, 1909.—xxiv, 471 pp.

Organization, Correspondence, Transportation. By LEE GALLOWAY, GEORGE B. HOTCHKISS and JAMES MAVOR. Same publishers, 1910.—xix, 494 pp.

Accounting Theory and Practice. By LEO GREENDLINGER. Same publishers, 1910.—xix, 513 pp.

Corporation Finance. By WILLIAM LOUGH, Jr. Same publishers, 1910.—xvi, 480 pp.

Money and Banking. By EARL D. HOWARD and JOSEPH FRENCH JOHNSON. Same publishers, 1910.—xviii, 495 pp.

Banking Practice and Foreign Exchange. By HOWARD MCN. JEFFERSON, and FRANKLIN ESCHER. Same publishers, 1910.—xiv, 407 pp.

These six volumes represent the first half of a really noteworthy undertaking, the exposition in a scholarly yet practical manner of the principles underlying the various phases of modern business. To the entire work is given the title *Modern Business*, but each volume, with the exception of the first, deals with particular methods of business and bears a corresponding title of its own. The editor of the series, Professor Joseph French Johnson and the authors of the several volumes are men of established reputation in their fields. In some instances they are practical and successful business men as well as publicists and teachers. According to the statement of the editor, in his preface, the aim has been, in the writing of these volumes, not to add anything new to our knowledge in the various fields which the books aim to cover, but to expound accepted principles in a manner as simple and direct as possible, in order that the business man and the youth starting out on a business career may obtain a helpful insight into the meaning of that great complex of affairs which we call "modern business." In other words, we have here an attempt further to democratize knowledge in a field where democracy of knowledge is of special significance both to the individual and to society.

Of the contents of six large volumes, dealing with nine different subjects, no adequate appreciation can be given within the limit of a single review; but for the benefit of those for whom the series is written

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it seems worth while to indicate some of the impressions which the reviewer has received from the reading of these volumes.

The first volume, as would naturally be expected, deals with economics. It is written by Professor E. S. Meade of the Wharton School. The author has made this work about as practical as a general treatise on economics could be made; he avoids all controversial discussion of economic theory, and where he deals with theory he employs the terms and follows the usage of the business world, drawing from actual business life precise and effective illustrations of almost every point that is made.

This volume is divided into four parts, dealing respectively with "Production," "Exchange," "Distribution" and "Economic Problems." Although this resembles the traditional treatment of the subject, Professor Meade has included in each part considerably more than is usually found in the more theoretical treatises. Under production, for example, he has chapters on "Private Property," "Training of Workers" and "Woman and Child Labor" in addition to the matter commonly discussed under the heading "Production." Under "Exchange" he discusses the media of exchange, the money system of the United States, credit, banking systems, prices and international exchange. Under "Distribution" we find first of all a discussion of "Forms of Ownership," then a chapter on "The Classes of Workers," and, in addition to the usual chapters on rent, wages, interest and profit, chapters discussing the *pros* and *contras* of the various systems of wage payments and labor organization, with a final chapter on "Taxation." The practical matters discussed are the railroad problem, the tariff, trusts and monopoly, socialism and the labor problem. As a whole, then, the book must be regarded as a very comprehensive treatment of its general subject, because the only topic of importance that is seriously neglected is that of insurance.

Professor Meade's theory of value is the marginal-utility theory, and his theories of rent, wages and interest are based simply on a logical application of the marginal-utility theory of value to the factors of production. The explanation of interest is especially clear. He shows that the rate of interest is determined just as is any other price in the market. The demand for capital originates in the desire of business men to control present funds, while the supply is conditioned by the relative estimate, on the part of savers, of the worth of future as compared with present gratifications, the rate being fixed at the point where this demand and supply are brought into equilibrium. This is an explanation of interest which should be intelligible to anyone. Child

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labor the author opposes on purely economic grounds. Women, he believes, have come into industry to stay; and the solution of the problem raised by their employment is to mold industry in such a way as to make it safe for them. In regard to the relations between labor and capital, the author emphasizes the economic significance of the golden rule. He approves of collective bargaining, but favors voluntary rather than compulsory arbitration (page 249). He believes that the influence of the trade union in increasing wages has been comparatively slight (page 252). He favors regulation rather than public ownership of the railways, and he quotes without comment a passage from Professor Seager's *Briefer Course*, in which physical valuation of railways and congressional control of future stock issues are strongly advocated. In his chapter on "The Tariff" the author leans heavily toward protection. The solution of the monopoly problem he finds in the "universalization of monopoly" (page 388); for when all industries are monopolized no one industry will enjoy an advantage. How this solution will appeal to those who have fixed incomes and to the professional classes is a question on which Professor Meade hazards no opinion. In his discussion of socialism he suggests the possibility of an ultimate tempering of both socialists and individualists in the great crucible of practical experience, so that both may be enabled to occupy common ground. The book is clearly written, in a simple and direct style, without any attempt at literary embellishment.

The second volume of the series bears the title, *Organization*, *Correspondence*, *Transportation*. It is really made up of three separate treatises, each of which deals with one of the branches included in the general title. "Business Organization" is discussed by Professor Lee Galloway; "Business Correspondence" by Mr. G. B. Hotchkiss. Both of these writers are members of the faculty of the New York University School of Commerce. Professor James Mavor is the author of the section dealing with "Transportation."

Part I, on "Business Organization" covers 224 pages. The first two chapters give a historical survey of business organization. The third deals with the organization of modern markets; the fourth, which treats of "Exchange," gives an excellent description of the Chicago Board of Trade as a typical market; the fifth deals with the marketing of manufactured goods and the sixth with the "Organization of the Export Business." Chapter vii is concerned with the "Consular Service," and describes the organization of the service as well as its activities. Chapters viii to xii, inclusive, deal with what might be called the internal organization of the business as distinguished from the sell-

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ing organization, which forms the basis of the discussion in the previous chapters. Here such subjects as "Department Functions and Organization," "Interdepartmental Relations" and "Office Systems and Reports" are dealt with. The last chapter gives a description of various kinds of industrial betterment and welfare work. In general it may be said of Professor Galloway's work in this volume that it gives a mass of purely descriptive material which is sadly lacking in most economic text-books but which is, nevertheless, of great value in helping a student to see the practical bearing of economic principles. These chapters could be most advantageously used as collateral reading in elementary economic courses.

Part II of this volume deals with "Business Correspondence." It discusses every aspect of the art of business letter writing and should prove valuable to practical business men.

Part III, dealing with "Transportation," covers 107 pages. It is concerned almost exclusively with railroads. The first chapter is introductory in character but discusses particularly the subject of legal regulation. Here Professor Mavor justifies state regulation on a very broad ground, *viz.*, that the state is essentially a "regulative agency," and that it assumes functions of regulation wherever this is necessary for "social order and quiescence" (page 363). In the second chapter, in which he discusses the relation of the railway to economic development in America, Professor Mavor points out, first, that its effect has been "to perpetuate the tendency of the old colonial period, the eastern states standing in the same relation to the West and South as formerly the colonies stood to the mother country, receiving their raw materials and manufacturing for them," and second, that the railway, by its control of rates and facilities, has largely determined the distribution of industries. In discussing the "Special Characteristics of Railway Enterprise" (chapter iii) Professor Mavor places more than the usual emphasis on the high proportionate cost of labor in the railway business. He takes exception to the general opinion that a railway is a natural monopoly. Such an opinion, he believes, is based on the unwarranted assumption that inventive genius and mechanical ingenuity will not some day perfect a new method of transportation which will supplement if not supplant the railway (page 389). The chapters on "Railway Capital" (iv), "Consolidation" (v) and "Classification" (vi) are short and to the point but contain nothing that is new. The chapter on the "Fixation of Rates" (vii) is a very interesting one. Professor Mavor admits at the outset that a "pursuit of a scientific principle of rate determination is probably

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quite hopeless" (page 413). Cost-of-service, value-of-goods and value-of-service theories are held to be inadequate. In actual practice we find the railways charging what the traffic will bear, but by no means is this the result of an arbitrary determination. To quote:

> Transportation may be looked upon as a part of the process of production, and the manufacturer or shipper may be regarded as the ally of and the coöperator with the railway in delivering his goods at the point of consumption. . . . From this point of view, the formidable driving power behind the railways is industry itself, which appears to be becoming more and more strenuously competitive [page 419].

The railway managers may take cost of service, in so far as that can be determined, as the basis of their subjective estimates as to what the minimum rates ought to be, but competition and other considerations may make the actual rates widely different. Chapter viii is an unusual and illuminating discussion of the "Mutual Reaction of Rates and Prices." It covers only four and a half pages, and it suggests the possibility and advisability of a much more thorough treatment. The topics discussed in the remaining chapters—"Discrimination and Differentials," "Management and Regulation" and "Nationalization"—are interestingly but rather briefly treated.

Of this second volume also it may be said that the several authors have succeeded in presenting their subjects in a clear, straightforward, practical manner, which obviates all possibility of confusion in the mind of the general reader.

Volume III is the work of Mr. Leo Greendlinger, lecturer on accounting in the New York University School of Commerce and Finance. Although it bears the title *Accounting Theory and Practice*, it too places the emphasis on the practice. The book is divided into five parts, dealing respectively with "Principles of Accounting," "Partnership Affairs," "Corporation Accounting," "Special Topics" (under which are discussed such important subjects as the distinction between capital and revenue, depreciation and other reserves, and insolvency accounts) and "Accounting Problems and Solutions." The foregoing enumeration shows the comprehensive character of the work. It abounds in illustrations and practical examples. In few other fields could the inductive method be so well applied, and Mr. Greendlinger uses it here with marked success. Modern accounting has attained the dignity of a science as well as that of a profession. While it is based on a body of more or less clearly defined and relatively simple principles, the application of these principles in all the ramifications and

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intricacies of the complex organization of modern business requires a degree of study and training which puts the expert accountant of today, as compared with his predecessor, the "bookkeeper," in a position similar to that which the modern dentist occupies as compared with the barber, who not so many decades ago carried on the occupation of extracting teeth as a remunerative side line of labor. To the literature of the subject, which is growing apace, Mr. Greendlinger's book is a distinct contribution.

Volume IV, on *Corporation Finance*, by Professor William Lough, Jr., in no wise falls below the standard set by the earlier volumes. Like these, Professor Lough's work is characterized by the use of innumerable practical illustrations, drawn from actual business experience. The first six chapters deal in a general way with the legal status of the corporation, with its various forms and with its internal organization. Then follow chapters setting forth the various methods of raising funds for corporate enterprises and a chapter devoted to "Promotion" in its various aspects. A separate chapter describes the Steel Corporation. A further series of chapters describes the process of selling corporation securities; still another series deals with the question of financial management; and a few concluding chapters discuss insolvency and reorganization. Professor Lough looks upon the promoter as on the whole worth his hire. He believes that in this "new enterprise" the losses of those who fail probably offset the great gains of the successful few. The author does not show, however, that to society at large the promoter is necessarily as valuable an economic agent as he is to those who in the first instance reap the benefit of his labors. Professor Lough also regards favorably the capitalization of the Steel Corporation and is hopeful as to its outlook. He considers earning capacity the scientific basis for capitalization, but he does not discuss the relation of monopoly to earning capacity, when the latter is used as such a basis. The function of the underwriter is very fully explained in the chapters dealing with the sale of corporation securities and the use of Wall Street in this connection is clearly set forth. For corporation evils Professor Lough finds the remedy in "publicity and education." He doubts that the lawyers with their "quibbles and conservatism" will help much. Of public policy in regard to the important subjects which are treated in this book there is little discussion. The volume is written chiefly from the point of view of the corporation official, as Professor Lough himself says in the preface; and this is the chief criticism that must be leveled against it from the point of view of those who hold that the broader social interests must ever be of paramount importance.

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Professors Earl Dean Howard and Joseph French Johnson have collaborated in the preparation of Volume V, entitled *Money and Banking*. Of the volumes under examination this seems, to the reviewer, the most important and the best done. Although the principles set forth in it do not differ perceptibly from those expounded by Professor Johnson in his standard work on *Money and Currency*, yet the treatment here, while not so comprehensive, is more detailed; and does not presuppose, on the part of the reader, the special training and the amount of general information which are required for the understanding of the earlier and more advanced work.

In Part I, on "Money," there are eleven chapters, which deal first with the fundamental economic concepts and with the historical evolution of money, then with the theoretical principles, and finally with such questions as "The Production of the Precious Metals" and "Bimetallism." The discussion of fiat money and of bimetallism, not to mention other topics, is of course not to be compared with the treatment of these subjects in *Money and Currency;* but it must be remembered that the volume under review is intended for those who are new to the subject and whose reading for the most part must be done without the aid of systematic class-room instruction.

Part II, devoted to "Banking," covers 236 pages—a trifle more than half of the book. In this part, however, is to be found the discussion of the relation of credit to prices, a topic that concerns money as much as it does banking. And here again, it may be observed, the fundamental aims of clearness and simplicity and of the presentation of facts in a living atmosphere seem never to have been forgotten. Some of the topics here treated, which relate to the practical organization of banking, are again discussed in volume vi, but they could not have been eliminated in this volume without a considerable sacrifice of concreteness and clearness. Chapters xxiv to xxxi, inclusive, are concerned with the history and present problems of banking in America, and, for the purpose of setting these problems in relief and of suggesting possible solutions, two chapters are devoted to the discussion of the European and the Canadian banking systems. There are special chapters also on the "Relation of Banks to Wall Street" and on "Banks and the United States Treasury System." It will thus be seen that some of the shortcomings of the American system are amply dealt with, but Mr. Warburg's criticism of American discount methods does not receive due attention. On the whole, however, considering the special purposes and aims of the series, this volume is, in the reviewer's opinion, the best in the field.

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Volume VI deals with *Banking Practice and Foreign Exchange*. The first topic is treated by Mr. Howard McN. Jefferson, lecturer on banking in the New York University School of Commerce and Finance and vice-president of the bank of Coney Island. Mr. Jefferson devotes his attention to the internal organization of banks. He describes first the general corporate organization, then the organization of the staff, the system of books and records, and finally the separate departments. Separate chapters are devoted to the credit and collection departments. There is of course no uniformity in these matters throughout the field of American banking, but Mr. Jefferson gives a description of the best practice. His work may thus not only serve as a guide to practical bankers, but it will also help the economic student to understand the inner mechanism of the banks whose outer activities are the subjects of his study.

Mr. Franklin Escher, financial editor of *Harper's Weekly* and author of several publications dealing with foreign exchange, is the author of Part II, entitled "Foreign Exchange" which covers only seventy-two pages. This part is divided into five chapters, all of which are weighted down with the most useful kind of information. The broad theory of international exchange is not very thoroughly discussed, but we have instead a clear explanation of the processes involved in such exchange, and this explanation is reinforced by concrete examples which makes it easily intelligible. Chapter i takes up briefly the underlying principles of foreign exchange and describes the various kinds of bills and the manner in which they originate. Chapter ii, entitled "How Money is Made in Foreign Exchange," explains the various operations from the banker's point of view. Chapter iii, on "Foreign Exchange and Foreign Commerce," shows to what a large extent modern commerce is dependent upon the use of credit in exchange transactions. Here is where the real economy of exchange operations is found. Chapter iv explains the importance of foreign exchange in connection with the international security market. The volume of exchanges arising out of international security dealings is enormous; but the exchange transactions to which they give rise are simpler than those which have their origin in foreign commerce. Hence this chapter is not so long as the one which precedes it, and it will probably be more easily understood. Chapter v, dealing with international gold movements, might advantageously have been expanded; but, since the topic is also discussed in the volume on *Money and Banking*, the brevity of the treatment here is not a serious fault. The work as a whole, while not nearly so comprehensive, from the point of view of practical operations, as Margraff's

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book on *International Exchange*, is nevertheless more clearly written and much better arranged.

The six volumes under review constitute already a real achievement. They also indicate what may be expected in the other volumes. Always bearing in mind the purposes they are intended to serve, they leave little to be desired. This applies to physical construction as well as to subject-matter. Perhaps the opportunity that was presented in this popular series to cultivate a broader social conscience has not been fully improved; but any such criticism is largely an expression of an individual point of view.

EUGENE E. AGGER.

COLUMBIA UNIVERSITY.

Manuel d'économique. Par ADOLPHE LANDRY. Paris, Giard et Brière, 1908.—889 pp.

Readers of Professor Landry's earlier works would have found little difficulty in predicting the general character of a "Manual" from his pen. Professor Landry habitually works up his subjects systematically, with due attention to the literature and with evident resolution to give respectful consideration to every point of view. Whatever contributions he may make are carefully coördinated with the body of existing doctrine and are so developed as to minimize, rather than exaggerate, their true importance. His method is especially adapted to a work of this kind, which is designed to summarize the achievements of the science, not to concentrate attention upon special problems. The book under review should serve as an admirable basis for undergraduate instruction and, in an English translation, might successfully meet the competition of American texts, were it not for the prevailing demand for local color in economic manuals.

The first two hundred pages of the book consist of an introduction, which conveniently disposes of such questions as the nature and method of economic science, and a book on the "Psychological Bases of Ecônomics." In this division are treated a host of topics that form necessary prolegomena to the serious work of the science: wants and needs, goods, utility, the nature of labor, self-interest, the *homo œconomicus*. Book ii, entitled "Production," fills another two hundred pages. Here we find treated most of the topics usually placed under this head, together with some that are commonly treated elsewhere, such as competition and monopoly and banking. Under the head "Exchange" our author treats the mechanism of exchange and the general subject of value, thus committing himself to the position

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that distribution, to which the last book is devoted, is not a mere value problem. The last hundred pages contain two appendices, the first treating of the problem of property and the second of the problems of international trade. Public finance finds no place in the work.

Within the limits of a review, a systematic criticism of a book of the general character of Professor Landry's is impossible, for this would involve a critique of the entire neo-classical school. The reviewer's sole function must be to state whether the work is well done or not; and Professor Landry, as all readers must admit, has done his work well. Special attention may indeed be called to some parts of the work which, in emphasis, at least, represent substantial contributions to theory. Thus in the discussion of profits (pages 665–682), Professor Landry gives independent treatment to an important cause of profit which is ordinarily obscurely treated under monopoly, if not altogether neglected. Opportunities for unusually productive investment are frequently beyond the reach of all but a small number of individuals who combine knowledge of the situation with command of capital. The greater the capital required, the smaller the number of competitors for the opportunity—at least until the stage of corporate entrepreneurship is reached. It follows that an opportunity for investment demanding large capital will yield high returns of the nature of profit. These returns are obviously unexplained by the "dynamic," the "risk" or the "differential ability" theories; nor do they present the same characteristics as ordinary monopoly profits.

If any fault may be found with the book, it would be on the score of a tendency to overrefinement. Distinctions are sometimes drawn with a subtlety that recalls the controversies of the schoolmen. Thus, in distinguishing between a loan and a lease, Professor Landry urges that the element of time is fundamental to the loan while it is only accessory to the lease.

> A landed proprietor surrenders the use of his land to another individual who will exploit it in his stead. This necessarily involves the surrender of this use for a definite period, since the exploitation of land requires labors which take place in time and do not yield immediate fruit. But the essential element of the renting contract is to permit the tenant to exploit the land and thus make his living. The best proof of this is that the farmer may, not inconceivably, pay the rent in advance. On the contrary, in a contract of loan what is fundamental is the length of time which the loan has to run [page 373].

It may be possible to find a distinction here, but prizes have been

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offered for less difficult tasks. And when an obvious distinction can be drawn, why operate with one so obscure?

ALVIN S. JOHNSON.

UNIVERSITY OF CHICAGO.

Second Chambers. An Inductive Study in Political Science. By J. A. R. MARRIOTT. Oxford, the Clarendon Press, 1910.—viii, 312 pp.

In a general survey of about two hundred and thirty pages, Mr. Marriott brings under review the upper houses of the legislatures of England, the United States, the German Empire, Switzerland, Canada, Australia, South Africa, France and other countries. He calls his volume "an inductive study in political science," but his conclusions are commonplace, even to the most casual student of government. The first conclusion which emerges "irresistibly," as our author puts it, is "that no modern state, whatever be its form and government, whether federal or unitary, monarchical or republican, presidential or parliamentary, constitutionally flexible or constitutionally rigid, is willing to dispense with a second chamber." The second conclusion is "that three of the greatest states of the modern world have actually tried and abandoned the experiment of a single legislative chamber." The third conclusion, which, our author thinks, can "hardly be resisted by any one who is at the trouble to master the facts," is "that whatever be the case with unitary states, the bi-cameral system is essential to the successful working of a genuinely federal system." If Mr. Marriott had not brought together within such a small compass so many important and interesting facts concerning modern legislatures, one would be tempted to say, in view of the results reached by his inductive study, that the volume represents much labor and little fruit.

A really inductive study of the merits of the bi-cameral system involves more than a mere survey of the external political history of various countries. It involves more than the testimony of observant travelers or the commentary of facile publicists. It requires the application of certain fundamental criteria to a mass of concrete political operations, concerning which it is wellnigh impossible to obtain the facts necessary for scientific judgment. It raises questions which students of political science have scarcely begun to consider. Does the record of the business transacted in any legislature show that the upper house has wisely and consistently moderated the radical or ill-considered measures introduced in the lower house? Is it possible to discover where the most important bills before any legislature actually

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originated, that is, in what extra-legal bodies or groups? How many radical bills introduced in any lower house and curtailed by the upper would have been introduced if the members of the former had not known of the probability of veto in the latter? Does not the abolition of upper houses in the legislatures of American cities (some of which have populations and budgets far in excess of the populations and budgets of many commonwealths and even independent nations) argue in favor of a simplified and responsible single house, at least for many states and nations? Does not the bi-cameral argument overlook the modern doctrine of party organization and discipline? These and a hundred other criteria should be applied to a concrete case before a really scientific answer could be made to any of these questions. This would require a degree of research and patient analysis which too few persons who presume to write on political science are willing to undertake.

Certainly Mr. Marriott has gone at his task in no such spirit. Take for instance his study of the Senate of the United States. He seems to be unaware of anything that has happened to this body during the last twenty-five years. He says (page 40) that the Senate is not directly elected. Of course direct election is a vague phrase, but at the present time far more than one-half of the senators are elected by some form of direct election, in spite of the constitutional provision. He says (page 40) that the senators represent legislatures, but this overlooks the party caucus, which chooses the senator even where the legislature retains the nominal right to choose. Finance bills, we are informed on page 97, must originate in the House of Representatives, but all politicians know that this is a pious fiction. Five federal judges, instead of four (page 98), have been impeached; two-thirds of the senators are not required to approve presidential nominations (page 99); the statement as to "senatorial courtesy" (page 100) is incorrect; the Civil Service Act of 1883 is not merely "permissive" (page 101). Mr. Marriot approves the practice of the Senate in "maintaining the confidential character of its executive sessions," but American schoolboys know that the proceedings of "secret" sessions appear with astounding regularity in the morning papers. He thinks (page 109) that the United States has solved the problem of getting a satisfactory upper house derived from a source other than the electorate for members of the lower house; but it happens, as has already been noted, that direct election has overthrown, the system that he is describing. If the scheme of indirect election is so satisfactory, why did the Democratic party in its platform of 1908 and Mr. Taft in his acceptance speech approve the principle of direct election?

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The most valuable part of Mr. Marriott's book is the chapter on the movement for the reform of the British House of Lords, which contains his own suggestions for a reconstruction of that venerable fabric. His conclusions on this matter are very temperate, but it is to be hoped that they do not depend upon the inductive study which precedes them.

CHARLES A. BEARD.

Ancient and Modern Imperialism. By the Earl of CROMER. New York, Longmans, Green and Company, 1910.—143 pp.

A comparison of modern with ancient imperialism, by a British statesman who has governed with signal success a country which formed one of the most important provinces of the Roman Empire, challenges attention; and Lord Cromer's little volume fully merits the careful consideration which it is sure to receive. As the author includes in his comparison only those portions of the British Empire "in which the inhabitants are not bound to us by any racial or religious ties," thus eliminating the self-governing dominions, he naturally ignores the analogies between Greek and British colonization which other writers have attempted to establish; and, after a brief review of Greek efforts to achieve national federation and to establish foreign dominion, he concludes that "the undisciplined and idealistic Greek, with his intense individuality, was far less suitable to carry an imperialistic policy into execution than the austere and practical Roman" (page 14).

The analogies which Lord Cromer finds between Roman and British imperialism are for the most part too evident to have been overlooked by other writers. Of greater interest are the differences which he suggests or asserts. He frankly admits that "an imperial power naturally expects to derive some benefits for itself from its imperialism" (page 41), and that, if Rome exacted from its dependencies heavy tributes, Great Britain pursued the same policy in India until 1773. He admits also that humanitarian ideals and the feeling that even subject peoples are entitled to justice existed in the Roman Empire. But in affirming that since 1857 it has been recognized as "the principle which lies at the root of all sound administration . . . that administration and commercial exploitation should not be entrusted to the same hands" (page 69), he suggests, by silence regarding any Roman efforts in the same direction, that the British policy in this respect is wholly novel. At Rome, however, even in the republican period, a similar principle seems to have been recognized, however imperfectly it may have been applied. Efforts were made in that period not only to prevent official exploitation but to check the tendency of administrators and unofficial

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exploiters to conspire with each other against the provincials; and when, in the imperial period, tax-farming was replaced by governmental collection of taxes, considerable progress was made toward the realization of the very principle which Great Britain has recognized since 1857. It may be conceded that the taxation of the provinces was very heavy, even in the best period of the Roman Empire, and it would be unsafe to assert that the Roman Empire did as much for its subjects in return for their contributions as the British Empire is doing; but the conditions which prevailed in the second century, for example, are not properly indicated by limiting the examination, as Lord Cromer does, to the republican period and the principate of Augustus.

Another difference that is suggested by the author is the tendency of Great Britain, even in the administration of crown colonies, to develop local self-government. Lord Cromer is of course right in saying that the extension of Roman citizenship to provincials did not necessarily carry with it any powers of local self-government and that the authority which the Senate and people in the republican period and the princeps in the imperial period exercised over the provinces was legally unlimited. Equally unlimited, however, is the authority of the British Parliament in all British dependencies. Whatever local autonomy the inhabitants of the British Empire today enjoy, even in the self-governing dominions, has been granted by Parliament. In any comparison of Roman with British imperialism, accordingly, we should look simply at the extent to which local autonomy was conceded. On this point Lord Cromer's allusion to the disinclination of Roman imperialists "to interfere with local institutions more than was necessary" (page 116), and his citation from Mommsen in a foot-note on the same page, fail to give the reader any just notion of the amount of self-government which existed in the municipalities during the republican period; nor is there any suggestion of the extent to which this self-government was systematized during the early Empire. The degree to which members of the conquered races came to participate in the provincial and even in the central administration Lord Cromer does suggest, but in connection with another topic, that of assimilation.

That the idea of educating conquered peoples to such a point of self-government that they might become independent nations was never entertained by any Roman is undeniable; but to Lord Cromer himself this modern idea is wholly unacceptable, at least as regards India. "In this respect," he says, "something of the clearness of political vision and bluntness of expression which characterized the imperialists of ancient Rome might, not without advantage, be imparted to our own imperialist policy" (page 127).

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That the Roman Empire solved the problem of assimilating conquered peoples far more successfully than Great Britain or any other modern state, Lord Cromer fully recognizes. This, he says, is "easily" explained on the ground that the task of the Romans was less difficult. What is said on this point, on pages 91 to 114, is undoubtedly true, but it is only half of the truth. There were positive as well as negative reasons for Roman success in this crucial matter. Of one of the positive agencies of assimilation, commerce, Lord Cromer hints an appreciation on page 115, note 2. Of another agency, the Roman law, he has seemingly no appreciation. He is apparently not aware that the Romans, so far from imposing their legal notions upon their conquered subjects, constructed from the various legal systems of the Mediterranean a really universal law, which they then imposed upon themselves. He is aware, however, that English legal ideas are often repellent to subjects of Great Britain. Thus he says:

> Freedom of contract, the principle of *caveat emptor*, rigid fixity of fiscal demands, the expropriation of land for non-payment of rent, even the commonplace western idea that a man must be proved to be guilty of an offence before he can be punished, are almost as great innovations as the principle of representation accompanied by all the electoral paraphernalia of Europe. These divergent habits of thought on economic, juridical and administrative questions have served to enhance the strength of the very formidable and elemental forces, such as differences of religion, of color and of social habits, which are ever tending to sunder the governing race from that which is governed. There has been no thorough fusion, no real assimilation between the British and their alien subjects, and, so far as we can now predict, the future will in this respect be but a repetition of the past. *Fata obstant.*

In a foot-note to this passage the author cites, without comment, the Roman rule touching remission of rent when no crop can be reaped by the tenant. It may be added that the immoral rule of *caveat emptor* was rejected by the Romans before the Christian era, and that the very technical rules of the English law regarding evidence, which not infrequently frustrate justice, have no counterpart in the Roman law.

To the reviewer, Lord Cromer's testimony that English legal notions make for severance between the governing and the governed races in the British Empire is the most interesting suggestion in this very suggestive little book; but it may perhaps be queried why this unfortunate result should be attributed to fate. Is it fate that keeps the Briton insular?

MUNROE SMITH.

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Congrès international des sciences administratives. Brussels, S. Goemaere, 1910.

Among the congresses which assembled at Brussels during the summer of 1910, on the occasion of the International Exposition, was the first Congress of the Administrative Sciences. Its proceedings have been published in four volumes, to which it is intended to add a fifth. The volumes already published contain the papers which were prepared for the congress. The forthcoming volume will contain a stenographic report of the discussions which the set papers elicited.

The proceedings of the congress are interesting, first, because the calling of this, the first international congress on the subject, is significant of belief in the present importance of the matters which the congress was called to consider, and second, as showing the parts of the general subject of administration which seemed to those participating specially to demand consideration.

If we may regard the amount of attention devoted to a topic as indicative of its importance, it may be said without question that local government is at present the most important subject of administrative study; for two volumes of the proceedings, constituting considerably more than one-half of their total bulk, are devoted to various aspects of this problem. Reports from almost all parts of the civilized world were made upon local autonomy, upon the relations between the local areas and the central government, and upon the various administrative services of those local areas, such as the means of communication, local finances, charities, sanitation and municipal ownership and operation of public utilities. Of the other two volumes, one is devoted to the problems arising in connection with the central administrative organization, such as methods for recruiting the civil service, and strikes and associations of civil servants; the other, to methods of accountability and administrative records.

From the foregoing outline it will be seen that these proceedings are of great value to the student of administration, not alone because of the subject matter but even more because of the character of those who prepared the papers and who participated in the discussions. Many of the most eminent European students of constitutional and administrative law were present and took part in the proceedings. Their remarks, which were full of references to personal experiences and to the very latest administrative tendencies, will be found for the most part in the forthcoming fifth volume, which the American student of foreign administration should not fail to secure.

F. J. G.

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RECORD OF POLITICAL EVENTS

[From May 1, 1910, to November 8, 1910]

I. INTERNATIONAL RELATIONS

AMERICAN RELATIONS.—On September 7 the **Newfoundland fisheries** dispute between the United States and Great Britain (see last RECORD, p. 360) was adjusted by the International Court of Arbitration at the Hague, the American position being sustained on five points, the British on two. Henceforward the governments of Canada and Newfoundland may make reasonable regulations with respect to the taking of fish in their waters; and these regulations, if the United States call their reasonableness in question, will be reviewed by an impartial commission. The court accepted the headlands doctrine of Great Britain as against the American contention that the sinuosities of the coast should be followed in determining the three-mile limit. On the other hand, American vessels are relieved of the obligation of customs entry and the payment of various dues; they may employ British citizens as members of their crews; and they are to enjoy the same right to take fish in the bays, harbors and creeks of Newfoundland as in those of Labrador. The court was composed of five judges; and in every case its findings were approved by the American representative, Judge George Gray of Delaware, and by the British representative, the Right Hon. Charles Fitzpatrick, chief justice of Canada. The decision was unanimous, except that as regards the measurement of the three-mile line one of the judges upheld the American claim.—In May Secretary Knox and Ambassador Bryce exchanged ratifications of a waterways treaty with **Canada.** This treaty confirms to each country the free navigation of all boundary waters, fixes the amount of water that may be diverted from the Niagara river for power purposes, and gives an international commission authority to decide all questions regarding the use of boundary waters. On May 22 a treaty between the two countries settled the disputed coast boundary between Maine and New Brunswick. In response to a letter from Secretary Knox the Canadian government indicated in June its willingness to enter upon negotiations for a commercial treaty. The owners and masters of American vessels which proceed to Hudson Bay have been notified by the American government that they need no longer recognize the Canadian claim to exclusive rights over those waters. —The dispute between the United States and **Mexico** over the Chamizai zone at El Paso has been submitted to arbitration. The possession of these lands, valued at five million dollars, seems to depend upon the question whether the channel of the river has been altered by erosion or accretion. The burning to death of a Mexican at Rock Springs, Texas, led to riotous

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demonstrations against Americans in Mexico City on November 9 and in Guadalajara and other places on the following days. Order was promptly restored; and, in a note to President Taft, President Diaz promised to punish the rioters.—The Senate of **Haiti** ratified in July contracts under which an American syndicate will construct a railway connecting the interior with four seaports and will receive a twelve-mile strip of land on either side of its line.—During the continued disorders in **Nicaragua** President Madriz protested against the action of the United States in prohibiting the bombardment of Bluefields and in refusing to recognize the blockade maintained by the "Venus." Secretary Knox justified his government in a sharp reply, which pointed out that Bluefields was an unfortified and ungarrisoned commercial city, and that the "Venus" had fitted out at New Orleans. In July, Consul Olivares had to intervene on behalf of an American engineer named Pittman, who was captured while serving in the revolutionary forces, in order to secure him proper treatment in prison. —The claims of the Orinoco Steamship Company against **Venezuela** (see last RECORD, p. 361) were finally settled by the Hague tribunal on October 26, an award of $92,672 being made. The decision recognized the American contention that an arbitration may be voided by manifest irregularities.—In July, the American minister to **Brazil** protested against the proposed extension of the monopolies enjoyed by the Western Telegraph Company of England.—Following the death of King Edward, the United States and **Chile** invited King George to arbitrate the Alsop claim (see last RECORD, p. 361).—Early in July the United States protested against the new law regulating potash syndicates in **Germany**, since it adversely affected American contracts aggregating $30,000,000. No settlement has yet been reached.—More than three hundred American organizations were affected by the decision of the **Turkish** Council of State in August that foreign religious, benevolent and educational institutions should be freed from numerous restrictions and permitted to hold land.—In August a boycott of American goods and merchants was declared at Canton as a protest against the treatment of **Chinese** immigrants at San Francisco.—The preliminary reports of the Spanish commissions, which were charged with a study of the boundary dispute between **Ecuador** and **Peru** (see last RECORD, p. 361), having indicated a preference for the latter's claims, further ill-feeling was engendered in Ecuador, and an armed conflict was averted only through the joint representations of the United States, Argentina and Brazil.—All outstanding differences between **Brazil** and **Peru** were settled in July by an arbitration court, under the presidency of the apostolic nuncio, to the satisfaction of both parties.—Abundant evidences appeared of strained relations between **Argentina** and **Brazil**, the latter, for example, not being represented at the former's centennial celebration in May.

EUROPEAN RELATIONS.—The relations between Turkey and Greece, already strained by the **Cretan** situation, were further embittered by the determination of the Cretan government to exclude from the insular legis-

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lature the Mohammedan members who refused to take an oath of allegiance to the Greek king and by the election of four Cretans, including M. Venezelos, to the Greek National Assembly. The boycott against Greek merchandise continued throughout the Turkish empire; and the Porte appealed to the four protecting powers. The latter sent warships to Canea, and on July 8 delivered an ultimatum to the Cretan government, warning it that military occupation would be at once resumed unless the rights of the Mohammedans were guaranteed. The legislature on the following day passed a vote in favor of the unconditional admission of the Moslem deputies. The Greek government promised in August to support the powers in their endeavors to obtain the withdrawal of Cretan candidates for the Greek National Assembly. The appointment of M. Venezelos, however, to the premiership of Greece called forth in October energetic protests and threats on the part of the Ottoman government.—Disorders and outrages in **Macedonia**, directed mainly against Bulgarians, caused a considerable emigration into **Bulgaria** and the exchange of angry notes between the Bulgarian and Turkish governments. The former demanded an amnesty throughout Macedonia, the restoration of confiscated lands and the punishment of officials who practised illegal severities. The Porte, in reply, promised to issue instructions to ensure moderation in the treatment of the Bulgarians. —In June the **Rumanian** government assumed a threatening attitude in dealing with an attack by a Greek mob on a Rumanian steamship at the Piræus. An ultimatum to Greece was issued, but as a result of friendly intervention it was agreed that the Russian and Italian ministers in Bucharest should settle the matter and fix any indemnity.—It was stated by the London *Times* that early in September an important military agreement was made between Turkey and Rumania and that the possibility of a counter military *entente* between Greece and Bulgaria was being seriously discussed in diplomatic circles.—Rumors of a *rapprochement* between Turkey and the Triple Alliance received some credence from the visit of Hakki Pasha to Count von Aehrenthal and Herr von Kiderlen-Wächter at Marienbad. On the other hand the French government agreed in October to the subscription of a Turkish loan by French bankers, but only on condition that a French financial supervisor should be permanently connected with the Turkish administration. The Turkish government in July informed the Swiss federal authorities that it was willing to acknowledge the Red Cross in time of war on condition that the **Red Crescent** received equal respect from the signatories of the Geneva convention.—An improvement was noted in the foreign affairs of **Servia**. The Turkish heir-apparent visited Belgrade in June and was given a cordial, if not strikingly enthusiastic, reception. Negotiations of a commercial treaty with Austria-Hungary were concluded on July 23.—The powers in July recognized the change of **Montenegro** from a principality to a kingdom. King Nicholas took the occasion formally to renounce the article of the treaty of Berlin which prohibited warships from entering the port of Antivari. The Austro-Hungarian claim to a strip of

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Montenegrin territory commanding the road to Cettigne was refused.—A frontier dispute between **Austria-Hungary** and **Italy** in the neighborhood of Lago di Garda was satisfactorily settled in May by a commission.—The **Franco-German** tariff dispute continued, in consequence of the imposition of the maximum-scale German duties upon French wines.—Switzerland was the first country to recognize the new **Portuguese** republic.

AFRICAN RELATIONS.—According to the *Frankfurter Zeitung*, negotiations with regard to a mining law to govern the participation of foreigners in work at the **Moroccan** mines were concluded at Paris in June. The main difficulty was the question of determining the competency of a mining court.—As the result of an agreement between Mulai Hafid and the French government, a commission was instituted at Tangier to deal with foreign claims.—A French military expedition made a successful march in June one hundred miles inland from Casablanca to counteract anti-French propaganda. In the hinterland of the Shawia serious fighting was reported between French troops and native tribesmen.—An encounter at Casablanca between some Spaniards and Algerian troops in July called forth mutual apologies from the French and Spanish governments.

ASIATIC RELATIONS.—A **Russo-Japanese** agreement was signed and its terms were communicated to France and Great Britain early in July. According to the *Journal des Débats*, it guarantees the maintenance of the *status quo* in Manchuria and is at once an answer to Secretary Knox (see last RECORD, p. 364) and a defiance to China.—After protracted negotiations an arrangement was affected between **China** and **Russia** whereby, beginning September 1, the latter surrendered all special privileges of exclusive navigation on the Sungari River.—Port Arthur was opened by **Japan** to the shipping of all nations from July 1.—An agreement was signed at Paris on May 5 by representatives of the four international groups, providing that the Hankan-Szechuan railway loan of $30,000,000 should be shared by Great Britain, Germany, France and the United States. Representatives of the Southern Manchurian and the Kirin-Changchun railways signed in September a working agreement between the two lines.—A treaty was signed on July 22 formally transferring the sovereignty of **Korea** to the emperor of Japan (see *infra*, p. 760). The Chinese viceroy of Manchuria directed the officers to keep a careful observation over Koreans living there and to avoid diplomatic disputes with the Japanese consular authorities.—Japan in July notified all foreign countries with which she has commercial agreements of their termination a year hence.—In reply to violent protests against the continued presence of **Russian** troops in Northern **Persia**, the foreign minister stated in the Mejliss in August that he hoped soon, with the friendly assistance of the powers, to obtain their withdrawal.

INTERNATIONAL CONFERENCES.—The fourth **Pan-American Conference** was held at Buenos Ayres from July 12 to August 20. Señor Antonio Barmejo of Argentina presided. Among important acts were an agreement to submit to arbitration all money claims that cannot be settled

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amicably by diplomacy; a convention concerning reciprocity in patents and copyrights; and a change in name of the International Bureau of American Republics to the Bureau of Pan-American Union.—The eighth **Railway Congress** was held at Berne, Switzerland, early in July, with an attendance of 1500 delegates.—Early in the following month, the twenty-sixth session of the International **Law Association** was held in London: it considered divorce, bills of exchange and workmen's compensation as affected by international relations.—The eighteenth Universal **Peace Congress** opened at Stockholm on August 1. Nearly 500 members, representing twenty-two nations and most of the peace associations of the world, were present.—The International **Miners' Congress** met at Brussels in August.—The eighth International **Socialist Congress** was opened at Copenhagen on August 28. Nine hundred delegates attended, and strong resolutions against militarism were adopted.—A protracted debate on the right of capture at sea was a prominent feature of the **Inter-Parliamentary Conference** at Brussels in September.—At the **Eucharistic Congress** at Montreal, Cardinal Vincenzo Vannutelli, as the representative of the pope, was officially received by the Canadian government.—The International **Telegraph and Telephone Congress** opened its session in Paris on September 5, under the presidency of M. Millerand, French minister of public works.—An international congress for the preservation of game met at Vienna in September.—In the same month, an international congress on unemployment, representing twenty-one nations, assembled at Paris.—At a meeting of the International **Maritime Commission** at Brussels, September 12–20, treaties were signed aiming to settle the difficult questions of salvage and of collision.—The proposed International **Opium Conference** at the Hague was postponed for a year.

II. THE UNITED STATES

THE ADMINISTRATION.—Speaking at St. Paul on September 5, **President Taft** stated that, in his opinion, the federal government should retain its ownership of all coal, gas, oil and phosphate lands, leasing rights to private capitalists. Speaking in Ohio two weeks later, he criticized the distribution of funds for local improvements and indicated his purpose to ask Congress for authority to organize a supervisory board of engineers, who should recommend improvements in the order of their importance. A letter written by the president's secretary and made public at Beverly in September stated that the president would thereafter distribute patronage to regulars and insurgents alike.—President Taft ordered the withdrawal of 8,495,731 acres of water-power sites and phosphate and petroleum lands in Alaska on July 3 and of 35,073,164 acres of coal lands in the West on July 7 under the **conservation** law (see *infra*, p. 733). The total area of mineral and water-power lands now reserved by the government is about 125,000 square miles.—For the year ending June 30 the deficit of the **Postal Department** was $6,100,000 as against $17,600,000 for the year previous. This nota-

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ble improvement was effected through the elimination of wasteful expenditures, without the withdrawal of postal facilities in any direction. The annual report showed that considerable increases were made in the salaries of letter-carriers and clerks.—**Treasury** receipts from import duties under the Payne tariff for the year 1909–10 were $333,043,800, the largest sum collected in the history of the country and $33,000,000 in excess of the collections in the previous year. The corporation tax brought in over $27,000,000 during its first year.—As a result of the investigation of **customs frauds** at the port of New York, Charles R. Heike, secretary of the American Sugar Refining Company, and E. W. Gerbracht, formerly superintendent of the company's largest refinery, were convicted in June of conspiracy to defraud the government. The jury disagreed in the case of J. B. Bendernagel, formerly cashier of the Williamsburg refinery. In September Gerbracht was sentenced to two years' imprisonment and a fine of $5000, Heike to imprisonment for eight months and a similar fine. C. D. Drew and C. H. Wardell, formerly custom-house weighers, and George B. Bedell, formerly deputy surveyor of the Custom House, were brought to trial in September for fraudulent weighing and the taking of bribes from importers. Bedell was acquitted; the two others were found guilty of one unlawful act, the reception of money from an employee of Arbuckle Brothers, sugar refiners.—Attorney-General Wickersham appointed a board of army engineers to determine the best method of raising the wreck of the "Maine," Congress having appropriated $300,000 for that purpose.—Among the **appointments** made by the president were: F. W. Carpenter (formerly secretary to the president), minister to Morocco; C. D. Norton (formerly assistant secretary of the Treasury), secretary to the president; President Hadley of Yale, chairman of the Stock and Bond Commission which was created by the Interstate Commerce Act (see *infra*); Dr. Joseph Holmes, director of the new Bureau of Mines.

CONGRESS.—The first regular session of the sixty-first Congress ended on June 25. The most important measures advocated by President Taft (see last RECORD, p. 368) became law, though not without much amendment. The **Interstate Commerce Act**, signed by the President on June 18, brings telegraph and telephone, as well as express and sleeping-car companies under control as common carriers; establishes a commerce court, composed of five justices of the United States circuit court appointed by the chief justice for a term of five years, with appeal to the Supreme Court; prohibits greater charge for a short than for a long haul; and empowers the Interstate Commerce Commission to suspend rate increases for a period of ten months pending investigation. The clauses providing for physical valuation and allowing traffic agreements and stock ownership by railway companies in non-competing lines were not adopted. A commission is to investigate and report on the issue of railway stocks and bonds.—The **Statehood Bill** for the admission of Arizona and New Mexico became law on June 20.—The **Postal Savings Bank Act**, signed on June 25,

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provides that such post-offices as are indicated by a board of trustees shall pay two per cent on deposits of from $1 to $500 or shall give in exchange for deposits government bonds bearing interest at two and one-half per cent. The trustees may place moneys in state and national banks under guarantee of certain prescribed securities.—A **Public Lands Withdrawal Act** safeguards those public lands which have already been or which in future may be withdrawn from entry. Congress also authorized the issue of bonds for the completion of reclamation projects already undertaken, the money to be spent only after report by a board of army engineers appointed by the president.—The Sundry Civil Appropriation Bill was passed with an amendment allowing $250,000 for the work of a **tariff board**, which will investigate the cost of production here and abroad. Another sum of $100,000 was placed at the disposal of the president for the purpose of introducing economy and business efficiency into the executive departments.—On June 17 the House adopted a new rule allowing a majority of members to recall a bill or resolution from committee and have it placed upon the calendar.—The Senate committee appointed to investigate the increased **cost of living** (see last RECORD, p. 370) issued a majority report on June 23, indicating a large number of causes; the minority report appeared in the middle of August and laid the responsibility upon the high tariff.—The joint committee appointed to investigate the **Pinchot-Ballinger controversy** (see last RECORD, p. 370) concluded the taking of evidence on May 20. It was shown in the evidence that the president incorporated in his decision on the Glavis charges certain parts of a memorandum prepared by an assistant attorney-general who had been assigned as counsel to the secretary of the Interior and that the report of Attorney-General Wickersham was composed, after the rendering of the decision, from notes which had been transmitted to the president beforehand. On September 9 the four Democratic members of the committee issued a report in which they charged that Mr. Ballinger "has not been true to the trust reposed in him as secretary of the Interior, that he is not deserving of public confidence, and that he should be requested by the proper authorities to resign his office." In a separate report Representative Madison, insurgent Republican, declared that the secretary "should not be retained; that he was an unfaithful trustee of the people's interest, an enemy of conservation"; and that the Pinchot charges should be sustained. This action was taken at a time when, through the withdrawal of three Republican members, there was no quorum present, and it was denounced as an election trick by six Republican members who afterwards met at Chicago.—On June 20 the Senate adopted a resolution to investigate the charges of **bribery and corruption** in connection with the election of Senator Lorimer of Illinois (see *infra*, p. 735). A committee of investigation opened its sessions at Chicago on September 22. Several state senators and assemblymen acknowledged having received large sums of money after voting for Lorimer, but in most cases denied that their votes had been influenced

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thereby. L. O'Neil Browne, Democratic leader in the Assembly, denied all charges of bribery and gave a number of reasons for the support which Lorimer received from Democrats. In June Senator Gore openly charged that a bribe of $50,000 had been offered to him on condition of his withdrawing opposition to the sale of Indian lands valued at more than $30,000,000. He said that certain men high in the government had been mentioned to him as interested in this transfer. In August these men (Vice-President Sherman and Senator Curtis of Kansas) denied the truth of the charges before an investigating committee appointed by the House of Representatives and were entirely exonerated. After a session of four weeks in Oklahoma and the examination of a hundred witnesses, the committee adjourned till November.

THE FEDERAL JUDICIARY.—Among the more important decisions of the Supreme Court were the following. It is taking property without due process of law for a state to compel a railroad to construct switches at its own expense on the application of the owner of an elevator (Missouri Pacific Railway *v.* Nebraska, 217 U. S. 196). A state statute compelling railroads to distribute cars in a manner which subjects them to penalties under the law governing interstate commerce is unconstitutional (St. Louis Southwestern Railroad Company *v.* Arkansas). A state law levying a tax upon the occupation of wholesale dealers in coal and mineral oils does not deprive these dealers of the equal protection of the laws because wholesale dealers in other articles are not taxed (Southwestern Oil Company *v.* Texas, 217 U. S. 114). A statute of a state compelling a foreign corporation doing interstate business to secure a certificate from the state is a regulation of interstate commerce and as such is void (International Text-book Company *v.* Pigg, 217 U. S. 91). A state law prohibiting solicitation on trains for hotels or physicians does not take property without due process of law or deny equal protection of the laws (Williams *v.* Arkansas, 217 U. S. 79). A Philippine Commission statute which prescribes for the making of false entries in public records a fine of $4000 and imprisonment for more than twelve years, with accessories such as deprivation of civil rights, is unconstitutional as inflicting an excessive fine and a cruel and unusual punishment (Weems *v.* United States, 217 U. S. 351). A statute establishing different proceedings against corporations and against individuals for lessening competition does not deny equal protection of the laws; and a statute prohibiting arrangements for lessening competition is not void as a regulation of interstate commerce as to sales made by persons without the state to persons within it (Standard Oil Company *v.* Tennessee, 217 U. S. 413). The anti-trust statute of Mississippi does not impair the liberty of contract protected by the fourteenth amendment and is not unconstitutional (Grenada Lumber Company *v.* Mississippi, 217 U. S. 433). A license tax imposed on those doing a certain business within a state does not deny equal protection of the laws because not imposed on outsiders shipping the same goods into the state (Brown Forman Company *v.* Kentucky, 317 U. S.

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563). It is within the police power of a state to require tradesmen making sales of their stock in bulk to give notice to their creditors (Kidd, Dater and Company *v.* Musselman Grocer Company, 217 U. S. 461). In the absence of congressional regulation the several states may make reasonable regulations as to the manner in which trains shall approach crossings (Southern Railway Company *v.* King, 217 U. S. 524).—On May 2 the Senate confirmed the appointment of Charles Evans Hughes, governor of New York, as associate judge of the United States Supreme Court in succession to the late David J. Brewer. On July 4 Melville Weston Fuller, chief justice of the Supreme Court, died at the age of seventy-seven.

STATE AFFAIRS.—The **sixteenth amendment** empowering Congress to levy an income tax (see last RECORD, p. 371) has now been adopted by the following eight states: Alabama, South Carolina, Mississippi, Oklahoma, Kentucky (where the courts have decided that one of the attempts of the legislature to ratify the amendment was constitutional), Illinois, Maryland and Georgia (July 12). The following states have refused to adopt the amendment: Virginia, Rhode Island, Massachusetts, Louisiana and New York. In New York in May, when the measure was submitted to the legislature for the second time, and in Louisiana, in June, the amendment met the same fate: it was approved by the Assembly and rejected by the Senate.— The Democrats, favoring the initiative, referendum and recall, carried the elections for the constitutional convention in **Arizona.**—In September a constitutional amendment establishing the initiative and referendum was adopted in **Arkansas** by a vote of 91,363 to 39,680.—Following the declaration of a Democratic member of the **Illinois** Assembly that he had received $1000 to vote for William Lorimer as United States senator, L. O'Neil Browne, leader of the Democrat minority in the Assembly, and three others were indicted for bribery on May 6. On May 28 State Senator Holstlaw confessed before the grand jury that he had received $3200 for his vote. At Browne's trial three members of the legislature testified that he had paid each of them $1000 to vote for Lorimer. When, early in July, the jury disagreed, the state attorney charged that it had been packed and "fixed." After Browne's acquittal in a second trial, his attorney was indicted for bribing a juror. (For the investigation by a committee of the United States Senate, see *supra*, p. 733).—In July Governor Carroll of **Iowa** was indicted for criminal libel as the result of a grand jury investigation into the affairs of the state industrial school for girls.—The legislature of **Louisiana** provided for the establishment of the commission form of government in all cities having over 7000 inhabitants, except New Orleans, Baton Rouge and Lake Charles. On July 5 Governor Sanders was chosen to succeed the late S. D. McEnery as United States senator.—On May 10 the lower house of the **Massachusetts** legislature passed a resolution favoring the popular election of United States senators. —Elections to the constitutional convention in **New Mexico** resulted on September 6 in the choice of 68 Republicans and 32 Democrats, the

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majority being opposed to the initiative and referendum. On October 21 it was decided to insist on a boundary line that would give the state 200 square miles of territory now held by Texas.—A committee of the **New Jersey** Senate, inquiring into the conduct of school boards, discovered in July that principals of schools had been asked to pay several hundred dollars for renewal of their appointments. According to a decision rendered by Chief Justice Gummere on October 28, the state of New Jersey cannot interfere with the distribution of liquor within her boundaries by department stores in other states. This reversed the judgment of the lower court.—In May the Hinman-Green Direct Primary Bill, favored by Governor Hughes, was defeated in both houses of the **New York** legislature; the Cobb Bill, which was a compromise measure, was beaten in the Assembly after passing the Senate. Calling the legislature into special session in the following month, the governor endeavored, but without success, to secure the passage of a new direct primary bill. A committee, appointed at this session to investigate legislative corruption, began hearings in New York City on September 7. In October the former vice-president and Albany representative of a beet-sugar company testified that he paid $3000 a year for three years to the late Senator Raines, Republican leader in the Senate, and $3000 to the late Representative Burnett "as a token of the company's appreciation of their services." Testimony was also given regarding the sums collected by the "Street Railway Association" for use at Albany and in political campaigns. The Metropolitan Company gave $8000 and disguised the transaction as damages paid to an imaginary person for injuries. In October State Senator Gardner was arrested at Scranton and indicted in New York for an alleged attempt to bribe Senator Foelker in connection with the race-track gambling bill of 1908.—By a majority of 40,000, the people of **Oklahoma** adopted on August 2 a constitutional amendment prescribing an educational test for all those whose grandfathers could not vote, the purpose being to disqualify the 30,000 negro voters. The amendment was placed on the ballot as an affirmative proposal which must be struck out by those wishing to defeat it. On October 26 the supreme court of the state decided that the amendment and the method of its adoption were valid.—In July the superior court of **Pennsylvania** handed down a decision upholding the validity of an eight-hour labor law and affirming the conviction of a contractor who had employed his men beyond the legal limit.—The legislature of **Rhode Island** met in special session in August to receive the report of the redistricting commission and to revise the tax laws. —On May 25 the **Texas** court of appeal upheld the constitutionality of the law against race-track gambling. In August, acting upon a special message of Governor Campbell, the Assembly passed a measure prohibiting saloons within ten miles of a public school; the Senate, however, rejected it.—Ex-Governor Swanson was appointed on August 1 to serve as United States senator from **Virginia** during the unexpired term of the late Senator Daniel.

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MUNICIPAL AFFAIRS.—Among the towns and cities which have adopted the **commission** form of government since last June are: Sapulpa, Duvean, Muskogee and Wagoner, in Oklahoma; Oakland and Modesto, California; Gadsden and Montgomery, Alabama; Fort Dodge, Iowa; Lyford, Texas; Baker, Oregon; and Lynn, Massachusetts.—The city council of **Chicago**, as the result of its failure to come to terms with a private company, took steps towards constructing municipal docks and piers. On October 28 the supreme court of Illinois affirmed the judgment of a lower court under which Police Inspector McCann of Chicago was convicted of accepting bribes from the keepers of disorderly houses.—Towards the end of May charges of immorality and drunkenness were brought against Chief of Police Kohler, famous for his "golden rule policy" in dealing with petty lawbreakers in **Cleveland**. He was entirely exonerated, the charges appearing to have been made for political reasons.—At **Dallas**, Texas, the recall was used in September to displace two members of the school board, following the discharge without hearing of two veteran teachers. Ten per cent more votes were cast than at the regular school elections in April, and the candidates substituted for the objectionable members won by a plurality of twenty-five per cent.—In May **Denver**, Colorado, chose a woman as election commissioner, more votes being cast for her than for her seven male competitors. Approval was given to charter amendments establishing the initiative, referendum and recall.—Following an investigation of the city finances, the tax commissioner of **Hoboken**, New Jersey, issued at the end of May a report which revealed the grossest irregularities. It showed that warrants were paid exceeding the appropriations by over $200,000, that the amount of cash in hand was less than the amount of overdrafts shown in the books, that county taxes were used to defray the current city expenses and that supplies were bought at an average advance of thirty per cent over the market prices.—On October 21 Fire Chief Hamilton of **Lawrence**, Massachusetts, was convicted of bribery and sentenced to not less than two and one-half years in the state prison. Mayor White and several other officials were serving terms for conspiracy and attempted bribery. The mayor continued to confer with city officials and even awarded a contract for city work, although the president of the board of aldermen claimed to be acting mayor.—On August 9 Mayor Gaynor of **New York**, as he was about to sail on a vacation trip to Europe, was shot by a dismissed dock watchman and seriously wounded. After his recovery in October he accepted the resignation of the police commissioner, whose dismissal had been urged by the acting mayor, as a result of investigation into disorderly houses and gambling resorts. On July 14 the grand jury indicted Lawrence Gresser, president of the borough of Queens, New York, for auditing fraudulent claims, and several subordinate officers of the borough for larceny. These and other indictments followed an investigation made by the city's commissioner of accounts.—After having pleaded no defence to charges of conspiracy and bribery in connection with the exposures of municipal cor-

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ruption in **Pittsburgh** (see last RECORD, p. 374), the president and cashier of the Columbia National Bank were fined $500 each and were sentenced to imprisonment for two and four months respectively. Both men had confessed contributing to a pool formed to secure city deposits for certain banks.—The state comptroller, after investigations in July, reported irregularities in the management of the finances of **Schenectady**, New York. Among these were: running the city on borrowed money, evasion of the contract law in the purchase of supplies and failure to contribute to the water-debt sinking fund. In July several former county officials were convicted at Schenectady of grand larceny and were fined. Three indicted officials forfeited bail as fugitives from justice.—During the first three months of commission government, **Tacoma**, Washington, spent $130,000 more than during the corresponding period of 1909.

THE CAMPAIGN AND THE ELECTIONS.—The Republican primaries and conventions were peculiarly interesting on account of the struggle within the party ranks between insurgents and regulars. Mr. Roosevelt played a prominent rôle. In New York he defeated Vice-President Sherman, nominated as temporary chairman of the convention by the state committee, and secured the acceptance of a direct-primary plank. Delivering speeches through the West in the latter part of August and the beginning of September, he helped to bring about a series of **insurgent victories**. In the Michigan primaries Charles E. Townshend secured the senatorial nomination over Senator Burrows by a large majority; in Wisconsin, on the same day, La Follette won a sweeping victory; in Washington, on September 13, the insurgents carried every congressional district but one and nominated Miles Poindexter for the Senate; in Minnesota, a week later, the general results of the primary were very favorable to the insurgents; in California, after nominating the governor, they secured control of the state convention in September. The most important deliverance of Mr. Roosevelt was his speech at Ossawatomie, Kansas, on August 31. In this he outlined his creed of "**New Nationalism**": government supervision of the capitalizing of interstate corporations, supervision of combinations which control the necessaries of life, personal responsibility of directors for breach of the law, graduated income and inheritance taxes, regulation of the terms and conditions of labor and much else.—The campaign showed a strengthening of Democratic confidence, based partly upon the tariff and the increased cost of living and partly upon the divisions in the Republican party.—The September **elections** in Maine and Vermont more than fulfilled their expectations. In Vermont the Republican majority fell to 18,000. In Maine the Democrats won their first victory in thirty years, electing the governor and two congressmen, as well as a substantial majority of both houses of the legislature. The elections held in the other states on November 8 yielded equally notable Democratic victories. For the first time in sixteen years the Democrats secured control of the lower house of **Congress**, winning, according to the returns available at the close

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of this RECORD, 227 seats. In New York they gained ten seats; in Pennsylvania, in Illinois and in New Jersey, respectively, five seats; and in Ohio four seats. One Socialist was elected, Victor L. Berger of Milwaukee. In the Senate the Republican majority will be reduced to eight, as a result of the election of Democratic legislatures in Indiana, Maine, Missouri, Montana, Nebraska, Nevada, New Jersey, New York, Ohio and West Virginia; and the insurgents, with increased numbers, will hold the balance of power. In the **gubernatorial contests** the Democrats gained seven states (Connecticut, Idaho, Massachusetts, New Jersey, New York, Oregon, Wyoming) and lost three (Nebraska, Nevada, Tennessee). In Connecticut the plurality of Judge Baldwin was about 3600, the Republicans winning the rest of the state ticket and the legislature. In Massachusetts the plurality of Eugene N. Foss was about 33,000, and the Democrats also made considerable gains in the legislature. In New Jersey the plurality of Dr. Woodrow Wilson was nearly 50,000; the Republicans sustained their worst defeat in fifteen years. In New York the plurality of John A. Dix, the first Democratic governor elected since 1892, was about 66,000; the Democrats also carried the rest of the state ticket and a majority of the seats in both houses of the legislature. In Ohio Governor Harmon was elected for a second term, his plurality of more than 100,000 being the largest ever obtained by a Democrat in that state. In several states where the Republicans were successful their vote showed a decline; in Pennsylvania J. K. Tener's plurality for governor was only about 33,000. In California and Minnesota, however, they did especially well, electing in each case the whole state ticket and all the congressmen, as well as Republican legislatures.—A constitutional amendment was adopted in the state of Washington granting **female suffrage**; similar amendments were defeated in Oklahoma and South Dakota. **Local option** was carried in Florida and lost in Oklahoma and South Dakota.

THE TRUST PROBLEM AND THE RAILROADS.—In June the Interstate Commerce Commission ordered a reduction of **sleeping-car rates** from Chicago to St. Paul and from St. Paul to points on the Pacific coast. On July 8, however, the United States circuit court granted a stay, pending a rehearing before the commission, and directed the companies to file a bond out of which passengers might be reimbursed should the original ruling be sustained.—In July three companies engaged in the manufacture of umbrella frames were fined $1000 each in the federal district court at Philadelphia for violation of the **Sherman Act**. In Oklahoma the Waters-Pierce Oil Company was fined $75,000 and forbidden to enter into any combination in restraint of trade.—On June 15 the Bethlehem Steel Company and two railroads, the Lehigh Valley and the Philadelphia and Reading, were convicted of soliciting and granting cancellation of demurrage charges (see last RECORD, p. 375).—In three cases, decided in August and September, the Interstate Commerce Commission held that the Pennsylvania Railroad had shown unjust discrimination in distributing cars among the operators

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in the bituminous coal fields of Pennsylvania. Claims for damages were left undetermined pending further argument.—On June 23 Judge Landis in the United States district court at Chicago sustained the demurrers of the so-called **beef trust** to the indictment found in March (see last RECORD, p. 375). In September, as a result of a second federal inquiry, a grand jury at Chicago indicted ten leading officers of packing companies for illegal combination in restraint of trade. At the close of June the attorney-general of Missouri brought ouster proceedings against five of the great companies, demanding their exclusion from all corporate rights in the state and the forfeiture of their licenses.—In June the United States district court in Iowa sustained the federal law regulating the hours of service for train crews on interstate railroads.—In September a federal grand jury at Chicago indicted the officers of several brick-manufacturing companies, whose works are in Illinois and Ohio, alleging that they had formed a **brick trust**.—On June 27 the Cumberland Telephone and Telegraph Company was convicted in the chancery court of Mississippi of violating the **state anti-trust law** and was fined $175,000. In September it was decided by an Arkansas court that the American Book Company, against which suit had been brought for penalties aggregating $3,000,000, was not a trust within the meaning of the local anti-trust law.—On October 21 suit was brought against the American Tobacco Company by the Kentucky revenue agent, who alleged that the company had evaded taxation by making false reports to the state auditor.—On June 17 James A. Patten and seven others were indicted by a federal grand jury at New York for conspiring to monopolize the raw cotton industry.—In May, following the demands of their employees for increased wages (see *infra*, p. 742), the railroads announced a general advance in **freight rates** ranging from three to thirty per cent. The United States attorney-general obtained an injunction from the federal circuit court at Hannibal, Missouri, restraining the twenty-five railroads of the Western Trunk Line Committee from giving effect to the advance and brought suit for the dissolution of the committee under the Sherman Act. After an interview with President Taft representatives of the railroads agreed to suspend the increases until the passage of the Interstate Commerce Bill (see *supra*, p. 732), the administration on its side dropping its injunction proceedings and its suit against the western lines. The first break in the opposition of shippers came in the same month, when the packing houses of Chicago and the eastern roads reached a compromise under which the average increase was estimated to be about eleven per cent. On July 13, acting under the new federal law, the Interstate Commerce Commission suspended the proposed rates throughout the country, and, a month later, ordered 415 common carriers to show cause for their being put into effect. At the close of this RECORD an investigation was in progress. Shippers asserted that the increases would fall with unequal weight upon class freights as distinguished from commodity freights (such as steel, sugar and paper) and complained that the railroads had determined upon the increases before

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their employees had demanded higher wages.—On May 31 the United States Supreme Court sustained the Interstate Commerce Commission in ordering reductions in the Missouri and Denver freight-rate cases. In six decisions, announced in June, the commission ordered reductions of from twenty to fifty per cent on freight rates west of the Missouri, especially in the intermountain states. Many of these cases concerned cities like Spokane, which had been compelled to pay through rates to the coast plus the local rate back, although freights were dropped on the way westward. —In July the commission refused to suspend the increased **commutation rates** which were announced in May and June by railroads having terminals in New York City.

LABOR AND CAPITAL.—In July an agreement was reached between the **Bucks Stove and Range Company** (see last RECORD, p. 375) and the American Federation of Labor. The company promised to unionize its shop, to withdraw its attorneys from all pending cases and to bring no further proceedings relative to the late controversies; the federation undertook to declare publicly that all differences with the company were at an end. In September a stockholder of the company applied for an injunction to prevent the consummation of the closed-shop agreement; but the application was refused by Judge McPherson of the United States circuit court.—Demanding a thirty-five-per-cent increase in wages, a forty-eight-hour week and the closed shop, 70,000 **cloakmakers**, employed in over 1300 New York establishments, went on strike. There was comparatively little violence. On September 2 a compromise settlement was effected, the employers accepting union standards as to working conditions, hours and wages, while reserving the right to choose help freely within the limits of the union. It was also agreed that future controversies should be submitted to an arbitration board before recourse to strike or lockout.—At Columbus, Ohio, a **street railway strike** began in the middle of July, the Carmen's Union demanding, among other things, the reinstatement of certain dismissed employees. For three months violence and disorder prevailed; cars were dynamited; many persons were shot, some fatally. For a time 3500 national guardsmen, demanded by Mayor Marshall, held the rioters in check; but when the troops were sent home the situation became worse than before. Either through cowardice or sympathy with the strikers a number of policemen refused to ride on the cars and protect the strike-breakers. Without consulting the mayor, Governor Harmon ordered militia to the city again on August 15. Throughout the struggle the company refused to accept the principle of the closed shop or to submit to arbitration. The men were forced finally to give way and seek reëmployment. In addition to the losses sustained by the company and the strikers, business suffered heavily and the state spent a quarter of a million dollars. Charges have been filed against the mayor on account of his relations with the strikers and his failure to preserve order.—The street railway strike at Philadelphia in the spring (see last RECORD, p. 376) cost the Rapid Transit

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Company $2,300,000. The loss in fares during the two months was $1,500,000.—Early in July the strike of street railway men at Yonkers, New York, was settled by arbitration, Judge Keogh awarding them an increase of two cents an hour, or about nine per cent. An increase of one cent an hour was granted to the Rochester men, who struck about the same time.—Towards the end of September the **bricklayers** in New York city struck on all contracts of the firm of S. Nesbitt and Company, because of the employment by that firm of plasterers not recognized by the bricklayers as union men. The Mason Builders Association, by way of retaliation, locked out 10,000 bricklayers. A general strike followed, affecting all contracts of the association throughout the country. Strike and lockout were terminated on October 6, when it was arranged that union rules should extend to all towns and cities not covered by the previously existing agreement.—Through the summer **railroad employees** continued to make demands, sometimes supported by strikes, for an increase of wages to meet the increased cost of living (see last RECORD. p. 376). In May the conductors and trainmen on the Erie road secured an immediate advance of ten per cent in wages and a promise that the Baltimore and Ohio schedule, as fixed by arbitration under the Erdman Act, should be put in operation in July, 1911, for the freight service and on September 1 for the passenger service. Substantial advances were conceded by the New York, Philadelphia and Norfolk road, together with the assurance of better working contions. In June the demands of the New York Central trainmen and conductors were settled by arbitration, the award being a compromise between the original offer of the company and the Baltimore and Ohio rates. The New York, New Haven and Hartford road granted an increase of seven per cent to telegraphers, five per cent to towermen, eight to fifteen per cent to clerks, and eight per cent to 5000 mechanics in construction shops. Similar increases were granted by the Central New England Railway.—Early in July a threatened strike of conductors and trainmen on the southeastern railroads was averted through the mediation of Chairman Knapp of the Interstate Commerce Commission and Commissioner of Labor Neill.—On July 13 the conductors, trainmen and yardmen on the Pennsylvania lines east of Pittsburgh, by a vote of 12,781 to 1413, empowered the general committee to call a strike in case of failure to reach an agreement with the company as to wages and working conditions. Settlement was made a week later on the basis of a ten-hour day and twenty-six working days in the month.—On July 15 negotiations between the Lackawanna Railroad and its engineers resulted in an increase of wages averaging nearly thirteen per cent.—Repeated acts of violence and at least one fatality marked the strike of maintenance-of-way men on the Delaware and Hudson lines. On August 11 the company agreed to take back all men who had not been concerned in the disturbances and to pay a flat rate by the month, with no overtime and no deduction for reasonable absence from work. Under the old schedule the men had been paid by the hour.—On July 18 conductors

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and trainmen on the Grand Trunk system in Canada and this country struck for an increase in wages. Concessions were made by the company two weeks later, through the intervention of the Canadian minister of labor; but not all of the men were taken back, since the strike-breakers were retained in the employ of the company. On August 20 the engineers of the Central Vermont Railroad received an advance averaging twenty per cent.—On October 21 the boilermakers, pipemen and blacksmiths employed by the Missouri Pacific and Iron Mountain roads walked out in sympathy with 1200 striking machinists. On July 28 a board of mediation awarded the station agents and telegraphers of these roads an increase of six per cent, amounting on the average to five dollars a month. This award was made under the Erdman Act.—On August 1, as a sequel to the protracted strike which began last March (see last RECORD, p. 377), the **International Paper Company** conceded to its employees in New York and in the New England States an average increase of five per cent. It was agreed that all future differences should be submitted to arbitration.—In June all the large contracting firms in Philadelphia and vicinity granted the demands of the Brotherhood of Carpenters for an increase of five cents an hour. This concession averted a strike of **carpenters** and allied trades.—In July the employees of the **American Sugar Refining Company** at Williamsburg went on strike, demanding twenty cents an hour. There was much rioting and bloodshed throughout August in spite of the heavy police guard provided for the strike-breakers.—Rioting occurred in Chicago in October during the strike of **garment-workers** employed by several large wholesale houses.—On October 15 a thousand metal-workers in Philadelphia struck for an eight-hour day and a minimum of thirty-six cents an hour.—Towards the end of October a thousand "helpers" employed by the big **express companies** at Hoboken and Jersey City, New Jersey, went on strike and were joined by sympathetic drivers and clerks. At the outset the police were quite unable to give the strike-breakers adequate protection, and many persons were injured. On October 27 the strike spread to New York. On November 11 the men returned to work under the old conditions, the companies promising equal treatment of union and non-union men and an adjustment of differences by mutual agreement. Early in November most of the **taxicab drivers** in New York went on strike, demanding the closed shop.

LYNCHING AND THE RACE PROBLEM.—On July 8 a mob of five hundred persons broke into the jail at Newark, **Ohio**, and hanged a white detective named Etherington, who, raiding a bar which was open in defiance of the local-option law, had shot the proprietor. The mayor, suspended immediately afterwards by Governor Harmon, resigned his office, and the chief of police was dismissed.—In June two negroes were shot at Orange, **Texas**; no arrests were made. On July 22 a Dallas mob burned at the stake a negro who had attempted to enter the room of a white woman and who had killed a constable in his efforts to escape. On July 29 more

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than twenty negroes were killed in a race riot at Slocum, Texas. State troops were hurried to the place and many arrests made. The only causes assigned were that a negro had been insolent to a white man when forced to honor a promissory note, and that there were rumors of plotting on the part of the negroes. The lower house of the Texas legislature, on September 8, by a vote of 51 to 34, instructed senators and congressmen to work for a repeal of the fourteenth amendment.—Two negroes who confessed to the murder of a young white girl were lynched at Boniface, **Florida**, on July 30. At Graceville, on September 2, a negro and a negress were taken from the jail and hanged for shooting a deputy sheriff who had attempted to arrest the former on a charge of theft. According to the coroner's verdict, they met death at the hands of unknown parties. No arrests were made.—On October 14 a negro was finally shot and dragged through the streets of Huntington, **West Virginia**, after he had killed three persons and wounded five.—On July 3 a negro who had attempted assault upon a young white girl was taken from the jail at Dothan, **Alabama**, and lynched. On August 7 the local militia was called out to protect the jail at Evergreen, Alabama, where a negro was held on the charge of murder. Near Springfield, Alabama, on September 14, a posse of citizens killed a negro who resisted arrest for murder. On October 4 a negro who had assaulted a young white woman near Montgomery, Alabama, was taken from his guard and burned at the stake. Near Centerville, Alabama, on October 12, a negro charged with assaulting a white woman was shot to death, after the deputy who had him in charge had been overpowered.—Near Elliott, **Mississippi**, on July 21, a deputy sheriff killed seven negroes who attacked him when he attempted to make an arrest.—As a result of the prize-fight between Johnson (colored) and Jeffries, **race riots** occurred on July 5 in many parts of the country, especially in the South. Three negroes were killed in Ulvaldia, Georgia; two in Little Rock, Arkansas; one in New York; one in Omaha; one in Mounds, Illinois; one in Houston and one in Tyler, Texas. In a number of cities the exhibition of moving pictures of the prize-fight was forbidden.—In September a negro of Onancock, Virginia, entered suit for $100,000 against that town and the county board of supervisors for damages alleged to have been sustained during the race riots of 1907. He claimed, among other things, that his business, worth $10,000 a year, had been completely ruined.—In June the Kentucky court of appeals declared unconstitutional an act of the legislature providing that no industrial school should be established in any precinct of the state unless a majority of the local voters desired it.—In July President Taft appointed a negro as collector of customs at Washington.

THE DEPENDENCIES.—Visiting **Hawaii** in July, Secretary of War Dickinson announced that the government contemplated a great extension of the military defences in that island. After an investigation of charges that Russian immigrants were underpaid and ill-treated on the sugar plantations of Hawaii, an agent of the Russian government reported that the

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charges were unfounded.—According to the recent census, the population of **Porto Rico** is 1,118,012, representing a gain of more than seventeen per cent since 1899. An opinion of the attorney-general of Porto Rico declared that members of the House of Delegates must be members of the districts from which they were elected.—In two decisions, handed down on July 31 and August 3, the supreme court of the **Philippines** sustained the action of the governor-general in deporting objectionable aliens. It is believed that the extortion of blackmail by Chinese tongs, against whom it is difficult to obtain sufficient evidence for conviction in the courts, can now be stopped. Freer interchange of merchandise between the United States and the Philippines, as provided by the new tariff, doubled the exports from the islands and increased the imports 70 per cent in the first year. The export of sugar increased five-fold and the value of cigars exported rose from $5374 to $1,750,000. In August an uprising occurred in the province of Nueva Vizcaya under the leadership of Simeon Mandac, formerly governor of Ilocos Norte and long a fugitive from justice. Falling into the hands of the constabulary, early in September, he was sentenced to twenty years' imprisonment. His followers dispersed after his capture. Secretary of War Dickinson, who visited the islands in August, approved the project of consolidating the constabulary and the scouts under a board representing both bodies. This will effect a saving of a million dollars annually. In September Professor Street of the University of Missouri and W. L. Goldsborough of Maryland were appointed as the two American representatives on the committee which is to prepare a complete code of laws for the Philippines. Mr. Goldsborough has served as judge in two insular courts. Government inquiry into election frauds in Laguna province showed widespread bribery. One of the principal witnesses was murdered, probably by those whose corrupt conduct he exposed.

III. LATIN AMERICA

The presidential election in **Mexico** occurred on June 26. General Diaz was elected president for an eighth term of six years by an overwhelming majority. Señor Ramon Corral was chosen vice-president. Señor Francisco Madero, who opposed the reëlection of General Diaz, was imprisoned on a charge of seditious utterances, but was later released, and the case against him was dropped on condition of his leaving the country. A rising of Maya Indians, which threatened in June serious loss of life and property in Yucatan, was successfully suppressed by the army. In September the republic celebrated the centenary of its independence, one feature of which was the unveiling of a statue to Benito Juarez.—In the **Cuban** campaign for the November congressional elections (the first to be held under the auspices of the new republic) the Liberal party was divided: one group of Radicals, calling themselves "Young Cuba," advocated abolition of trusts, exclusion of foreign corporations from ownership of real estate and dissolution of religious orders; the other group advocated as its main plank the abolition of

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the Platt amendment to the Cuban constitution. The negroes formed a party of their own. Despite their divisions, the Liberals were generally successful in their elections.—A revolutionary plot organized in Jamaica by the Firminists against the **Haitian** government received a set-back in May through the arrest of several conspirators at Port-au-Prince and the death at Kingston of ex-President Nord Alexis, who was financing the movement. —The fortunes of the civil war in **Nicaragua** between President José Madriz and General Juan Estrada continued to vary; but, in the main, the cause of the revolutionaries bettered until on August 26 they entered Managua and President Madriz fled to Mexico. Three days later Estrada was proclaimed president at the capital. He appointed a cabinet from among prominent Conservatives, arrested several members of the former government on charges of conspiracy and called a constitutional convention, to meet in October and to decide the time and manner of the regular presidential election.—General Valadares, commandant of Amapala, was reported in October to have begun a revolutionary movement against Dr. Davila, president of **Honduras**.—Señor Don Ricardo Jiminez was inaugurated in May as president of **Costa Rica** for a term of four years.—Dr. Pablo Arosemena was elected on September 14 first vice-president of Panama. He thus became acting president of the republic for the unexpired term of the late President Obaldia, terminating in 1912.—Carlos E. Restrepo was elected president of **Colombia** on July 16.—Early in May, Señor Juan Vicente Gomez was regularly elected president of **Venezuela**. —A new cabinet was formed in **Peru** in August with Dr. Schreiber as premier and minister of finance, and with Dr. W. F. Porras as minister of foreign affairs.—In **Paraguay** in September Señor Manuel Gondra was elected president and Señor Juan Gaona vice-president.—The **Brazilian** Congress opened on May 3. The president referred in his annual message to the policy of rigorous economy, as a result of which the government had been enabled to send to Europe sums exceeding $45,000,000 to meet payments for the new squadron, the equipment of the army and national improvements. Marshal Hermes da Fonseca, the president elect, visited Europe during the summer months.—**Argentina** celebrated the centenary of its independence in May. Many official delegates were present, including Infanta Isabel of Spain and President Montt of Chile. Following a bomb outrage in the Colon Theatre at Buenos Ayres in June, the government enacted a drastic measure enabling the authorities to transport all anarchists in the hands of the police and to punish by death all attempts resulting in loss of life or serious injuries. About a hundred anarchists were arrested on suspicion. The final balloting in the presidential election in July resulted in the choice of Dr. Saenz Pena as president and Señor de la Plaza as vice-president, each of them securing over five-sixths of the joint vote of the Senate and Chamber. According to the budget presented to Congress in August, the revenue for the next year was estimated at $152,000,000. In September, Congress authorized the construction of

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another trans-Andine railway, to connect northern Argentina with Chile. An agricultural exhibition was opened at Buenos Ayres in July.—The Congress of **Chile** in June authorized the president to contract a loan of $20,000,000 for new warships and naval defence. President Pedro Montt, after visiting Argentina, undertook a journey to the United States and to Europe for his health. He died at Bremen on August 16. Only a few days later, Vice-President Albano died in Chile; and Señor Figueroa, minister of justice, became acting president until the general elections. The convention of the Liberal parties in September nominated Señor Ramon Barros Luco for the presidency, and the first returns from the polls on October 26 seemed to indicate his election. Chile celebrated the centenary of its independence in September.—Revolutionary outbreaks occurred in **Uruguay** late in October on account of the efforts of the government of Señor Williman to further the presidential candidacy of Señor José Battle y Ordonez. Dr. A. Bachini, who was in sympathy with the opposition, resigned his office as minister of foreign affairs on October 27 and announced his own candidacy for the presidency.

IV. THE BRITISH EMPIRE

THE UNITED KINGDOM.—King Edward VII died on May 6 of acute bronchitis after a short illness. The following day the prince of Wales was proclaimed as **George V.** The funeral of the late king was held at Windsor Castle on May 20 and was attended by official representatives of practically all countries, including the emperor of Germany, the kings of Norway, Greece, Spain, Bulgaria, Denmark, Belgium and Portugal, the crown princes of Austria-Hungary and Turkey, and Mr. Roosevelt and M. Pichon, representing respectively the United States and France. King George's eldest son, the duke of Cornwall, was created prince of Wales on June 23, his sixteenth birthday.—The king's death caused a lull in the government's struggle to limit the power of the **House of Lords** (see last RECORD, p. 380), and on the reassembling of Parliament, on June 8, the premier announced that conferences were being held between the Liberal and the Conservative leaders with a view to a generally satisfactory solution of the constitutional question. Both the Labor and the Nationalist allies of the government expressed disapproval of the conference scheme as making for compromise. To the great disappointment of the moderate element in the two chief political camps the conference proved a failure. On June 29, Mr. Asquith stated in the House of Commons that since the conference was unable to agree, the government had determined to adjourn Parliament until November 15, at which time the relations between the two houses would receive final treatment. The only important measures passed at the session of Parliament were those relating to the civil list, the regency and the accession declaration, which was amended so as to be less offensive to Catholics.—Mr. Lloyd George's second **budget**, introduced on June 30, proposed no new taxes and no changes in taxation; the revenue was esti-

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mated at over $900,000,000. A Woman's Suffrage Bill was read a second time on July 12 by 299 votes to 190 and referred to committee of the whole by 320 to 175. The Houses adjourned on August 3.—On July 19 about ten thousand employees of the Northeastern Railway went on strike in protest against tyrannical methods of officials. Traffic was disturbed for several weeks.—Messrs. Redmond and O'Connor toured the United States in order to secure funds for the next campaign, in which, they declared, home rule for **Ireland** would be the chief issue. Mr. O'Brien and the Sein Fein attacked the Nationalist leaders as traitors to real home rule.

CANADA.—Parliament was prorogued on May 4, after having passed the Naval Defense and Anti-Trust bills. The government decided in June that the navy must be built in the Dominion and that bids should be accepted only from Canadian or British firms. Sir Wilfrid Laurier, the premier, made a political trip during July and August through the western provinces, traveling 9500 miles, receiving over sixty deputations and delivering thirty-two public addresses. He urged a lowering of the tariff and reciprocity with the United States.—Differences between the Grand Trunk and Canadian Pacific **railways** and their employees were referred in June to the Conciliation Board, which handed down a decision, on the whole favorable to the employers. To avert a strike, the Canadian Pacific granted its employees slightly more favorable terms than those awarded by the board. On the Grand Trunk, a strike was declared on July 18 and nearly 4000 men quit work. As a result of the mediation of Mr. Mackenzie King, minister of labor, the strike terminated on August 2 in a compromise, by which the company agreed to grant an immediate general increase of fifteen per cent in wages and a further increase of ten per cent in 1912. The Dominion Railway Commissioners ordered in September sweeping reductions of freight rates on the Yukon and White Pass railway.—In June the Grand Trunk Railway system arranged direct connection between the Great Lakes and St. John and Halifax, thus providing the third through route to the Atlantic for wheat and other exports.—The annual Trades and Labor Congress at Fort William took action indicating a vigorous attempt at the next general election to create a labor party in the Dominion Parliament.—As the result of investigation in June into the affairs of the government printing bureau, one official and four employees were dismissed, one official was suspended and another committed suicide.—The strength and influence of the Catholic Church in Canada were indicated in many acts attending the Eucharistic Congress at Montreal in September (see *supra*, p. 731).—The public accounts of the Dominion for the fiscal year showed an unprecedented **revenue** of $101,000,000 and a surplus of over $22,000,000. The estimated wheat crop of the year was 110,000,000 bushels.—The premiers of Nova Scotia, Prince Edward Island and New Brunswick formally requested in September an amendment to the British North American Act, so that the parliamentary representation of the **maritime provinces** might not be decreased through emigration to the West.—A

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bill passed the **Quebec** legislature compelling all railways and public-utility corporations doing business in the province to print their tickets in both French and English.—The **Ontario** government increased timber dues from 50 to 500 per cent over the previous rates. A Conservation Congress met at Ottawa in October.—Elections in **Manitoba** on July 11 resulted in a victory for the Roblin government. All the cabinet ministers greatly increased their majorities.

AUSTRALIA.—A new **Commonwealth ministry** was formed early in May under Mr. Fisher, with practically the same personnel as that of the former Labor cabinet. At the opening of **Parliament** by Lord Dudley on July 1, a long legislative program was outlined. It included the payment by the Commonwealth to the states for ten years of grants equivalent to 10*s. per capita*, instead of the existing refund to the states of three-fourths of the customs revenue; the issue of Commonwealth bank notes as legal tender; a progressive income tax; the repeal of the Naval Loan Act; and the submission to a referendum of constitutional amendments authorizing the nationalization of monopolies and enlarging the powers of the Arbitration Court. Other matters to be dealt with were the northern territory, defence, federal postage rates, the Canadian mail service and a state-owned telegraphic service to Great Britain. The British islands in the southern Pacific were to be linked together by wireless telegraph under the control of the government. The first measure of the government's program passed the House in July and the Senate late in August. The Naval Loan Act was repealed in August. The bill for a federal note issue, as finally enacted in September, provided for the maintenance of a gold reserve of twenty-five per cent, a total note issue of $35,000,000, and beyond that sum one hundred per cent reserve. After an all-night debate, the Federal House passed on September 8, by 30 votes to 11, an appropriation for the military academy at the new capital, Yass-Canberra.—The Parliament of **New South Wales** passed several important labor bills: one established a superannuation fund for railway employees; another empowered the Industrial Court to fix minimum and overtime wages for clerical workers. The electoral law was amended so as to provide for second ballots in case no candidate received a majority on the first ballot. Parliament was dissolved in September and elections were held on October 14.—The program of the **Victorian** government included a Closer Settlement Bill, compulsory education and a land tax. —The **Queensland** Parliament authorized the construction of a trunk line running northwest and southeast across the state and connecting the three main railway systems.—In **South Australia** a motion of want of confidence in the government was carried in Parliament on June 2 by 22 votes to 19. A Labor cabinet was thereupon formed, with Mr. Verran as premier. The new ministry announced its program in July, promising adult suffrage, measures for dealing with deadlocks between the two legislative houses, compulsory purchase of land, assessment of land values for local rating purposes and workmen's insurance. The process of breaking up large

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sheep stations for agricultural development continued, the government opening up half a million acres in six months.—Sir Newton Moore, premier of **Western Australia**, said on July 26 that his program was a redistribution of seats, the liberalizing of the franchise for the Legislative Council, liquor reform and the establishment of a university. The premier, who resigned in September, was succeeded by Mr. Wilson, former minister of works.—The governor's speech at the opening of the Parliament of **Tasmania** on July 13 outlined the following program: systematic opening of crown lands, compulsory land purchase, construction of a railway to Flowerdale, concession of grazing facilities in mining areas, taxes on unimproved land and on incomes, extension of the system of medical inspection in the schools and creation of wages boards.

NEW ZEALAND.—Lord Plunkett retired from the governorship on June 1st, and the new **governor**, Lord Islington, was enthusiastically welcomed upon his arrival at Wellington on June 22.—**Parliament** opened on June 28. The government program included amendments of the Defence Act and special anti-trust legislation, aimed, it was believed, particularly at the Standard Oil Company. Yielding to an extensive agitation in favor of a strict race-track and gambling measure, a bill was passed in July repealing an act of three years before, which had legalized bookmaking. In September, Parliament passed a bill providing for the extinction of the existing debt of the Dominion in seventy-five years and for sinking funds for all future loans. The amendment to the Defence Bill, along lines suggested by Lord Kitchener, increased the number of men liable to military service from 30,000 to 75,000. The government in October introduced a Licensing Bill, including a proposal for national prohibition if fifty-five per cent of the voters should approve.

SOUTH AFRICA.—Lord Gladstone reached Cape Town on May 17 and was met by the premiers of the four South African colonies. Two days later he took the oath of office as **governor** and invited General Botha to form a ministry.—The **new federal government** was formally inaugurated on May 31 at Pretoria. General Botha himself assumed the portfolio of agriculture; Mr. Smuts, that of the interior; Mr. Fischer, that of lands; and Mr. Burton, that of native affairs. The following administrators of the several colonies were appointed: N. F. de Waal, Cape Colony; Johann Rissik, Transvaal; Dr. Ramsbottom, Orange Free Colony; and J. Smythe, Natal. Sir Henry de Villiers was made chief justice of the Supreme Court and created a baron of the United Kingdom. The delimitation commission, appointed by the Constitutional Assembly to make the first division of the provinces into electoral districts, issued its report early in June, and the campaign for elections to the new Parliament forthwith began.—The political groups tended to merge into two **parties** throughout the Union: the Nationalists, under the leadership of General Botha; and the Unionists, following the guidance of Dr. Jameson.—The **elections**, held on September 15, returned 67 Nationalists, 37 Unionists, four Laborites and 13 Inde-

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pendents—a majority of 13 for the ministry. General Botha, however, who was standing for election in the Pretoria constituency, suffered an unexpected defeat at the hands of Sir Percy Fitzpatrick, the Unionist candidate. The Nationalist members-elect for Losberg and Barberton resigned their seats in October in order to create vacancies for General Botha and for Mr. Hull, who had also been defeated. Lord de Villiers on June 28 unveiled at Cape Town a statue of Cecil Rhodes, erected by popular subscription.

INDIA.—Sir Charles Hardinge, newly created Lord Penshurst, was appointed in June to succeed Lord Minto as **viceroy.**—Native agitation and unrest were prevalent during the summer months, particularly in Bengal. The government rigorously censored the press, and the printer of the native newspaper *Karmayogin* was sentenced to six months' imprisonment for publishing an appeal by Mr. Ghose. Several issues of the *Jugantar* were confiscated and the writers arrested. Kamalish Rai, uncle of the rajah of Naldanga, was shot on July 10 for informing the police against political agitators. As a result of special activity of the Calcutta police in seizing seditious pamphlets and searching houses, a widespread conspiracy against the government was unearthed and its leaders were put on trial. A bill extending the provisions of the Seditious Meetings Act until March 31, 1911, was sanctioned by Lord Morley and passed the Legislative Council in August. The Bengal Provincial Conference, a branch of the National Congress, passed resolutions in September condemning anarchist outrages but demanding self-government for India.—Lord Morley rejected a memorial of the people of Rangoon urging the establishment of a high court in Burma. The Committee on **emigration** from India to the crown colonies and protectorates reported in June in favor of the continuation of the system of indentured emigration. The Legislative Council on July 22 empowered the government to prohibit emigration.

OTHER DEPENDENCIES.—A proclamation in the *Gazette* in September decreed that **Basutoland,** as well as Rhodesia, should be grouped for imperial customs purposes with the South African Union. It was reported that these regulations would shortly be extended to Bechuanaland and Swaziland.—A new franchise measure was framed in September for the **Ceylon** legislature, introducing the elective principle in four seats, allotted respectively to urban and rural Europeans, educated Ceylonese and burghers, and reducing the European representatives from three to two.—Drastic measures against the shipping trust passed the Legislative Council of the Straits Settlements in August, and in September these measures became law in the **Federated Malay States.**

V. CONTINENTAL EUROPE

FRANCE.—M. Brisson was elected president of the Chamber of Deputies on June 7. On the ninth, M. Briand, the premier, outlined as the government's program for immediate action by **Parliament**: franchise reform, improved budget methods, an income tax, judicial and administra-

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tive reform, the granting of corporate rights to trade unions and an increased naval expenditure. On June 28, the ministry secured a vote of confidence, 403 to 110. M. Caillaux, minister of finance, introduced on June 29 the budget for 1910–11, showing a revenue of about $850,000,000. He urged the necessity of rigorous reduction of expenditure in the various departments; and in order to meet the deficit of $40,000,000 he proposed increased registration and stamp duties and taxation on a higher scale of estates of persons having fewer than three children. The Electoral Reform Bill, presented to the Chamber on June 30, contemplated three important changes: the reëstablishment of the *scrutin de liste;* proportional representation in the interest of minorities; and the partial renewal of the Chamber every two years, the individual deputies having a six years' tenure of their seats. On June 24, a proposal to abolish decorations was debated in the Chamber; the premier said he would gladly see the system abolished but condemned the proposal as precipitate and carelessly framed. In July, the government introduced its bill to enable labor associations to make collective contracts with the representatives of capital; breaches of a collective contract should be ground for an action of damages, and an association should be corporately, and its members individually, responsible for such breaches. M. Caillaux's Income Tax Bill was debated at great length in the Senate. Little legislation was completed before Parliament took its summer recess, and upon reassembling, on October 25, its attention was turned to the labor difficulties.—A general **railway strike** was brewing throughout the summer. As early as the middle of April, a Congress of Railway Employees had formulated the demands of the men (chief among which, on both the Northern and the Southern systems, was the payment of higher wages and the increases of the minimum wage to five francs a day) and had urged the government to promote a conference between the directors of the railway companies and representatives of the men. The railway companies refused to enter a joint conference, and towards the end of May a general strike, organized by the General Confederation of Labor, occurred on the Southern railway lines. About 10,000 men went out and there was complete disorganization of traffic. On June 5 a provisional compromise was reached, and normal relations were gradually resumed. The General Confederation of Labor then directed its attention to the Northern Railway Company. The agitation continued throughout the month of June, and in July spread again to the employees of the other companies. Though there were sectional disputes here and there, the long-threatened general strike was postponed until October 12, when the bulk of the Northern employees quit work. Several outrages took place in the affected districts, and for a time Paris was straitened for food. Despite the protests of the Radical Socialist leaders, M. Briand's government employed strong measures in maintaining order and endeavoring to restore normal traffic. Several strike leaders were arrested.—Considerable interest was aroused in the country by revelations made in May

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concerning the management of various charitable institutions conducted by an ex-nun, Sister Candide. She was arrested on the charge of embezzlement.—The pope late in August issued an encyclical to the French hierarchy, condemning the *Sillon*, a group of Catholics who were carrying on a Republican propaganda.—The general prosperity of the country was attested by a remarkable increase during 1909 in the amount of foreign stock held in France. The increase was stated to be nearly $500,000,000 and the total holdings were estimated at $7,500,000,000.—President Fallières made a tour through the provinces during the summer. The official celebrations of the jubilee of the annexation of **Savoy** to France began at Chambéry on September 3.—Some progress was made in the consolidation of French authority in the **colonies**. In June a detachment of French troops defeated a force of Arabs at Daffa in the region north of Lake Chad. The pacification of the Ivory Coast proceeded rapidly during August and September; only the Upper Sassandra and Upper Cavally regions remained unpacified on November 1. The last rail of the French railway, 350 miles long from the sea to the Niger, was laid at Kurussa on September 17. The municipal councils in New Caledonia resigned, in June, as a protest against the appointment of M. Reichard to succeed Governor Bonhoure.

GERMANY.—Several changes in the **ministry** occurred during the summer. In June, Herr Dernburg resigned as colonial secretary and was succeeded by the under-secretary, Herr von Lindequist. In July, Baron von Schön was appointed ambassador to France, and Herr von Kiderlen-Wächter succeeded him as foreign secretary.—A serious **strike** spread throughout the great shipyards during August and September, and by October 1 over 22,000 workmen were idle. The men demanded a reduction of from three to four hours hours a week and an increase in wages of ten per cent. A compromise was finally effected, by which the employees secured an all-round reduction of one hour a week in their hours of labor and an increase of wages of about four to five per cent.—A speech of **Emperor William** at Königsberg on August 25, in which he laid special stress upon the divine right of the kings of Prussia, irrespective of parliaments or popular decisions, called forth some bitterly adverse comment from the Radicals and Socialists.—A papal encyclical eulogizing Cardinal Borromeo and his work against Protestantism created considerable resentment among Protestants: its reading was forbidden in parts of the empire, and it was made the subject of diplomatic representations by the German minister at the Vatican.—The eighth German Dreadnought was launched at Danzig in July.—At the annual congress of the **National Liberal party** at Cassel on October 1, general confidence was showed in the leadership of Herr Bassermann.—The action of the **Socialists** in the Baden Diet, in voting in July for the budget, raised within the party active discussion of the question whether Socialists should support finance bills promoted by non-Socialist governments. At the annual meetings of the Baden and Hessian Socialists, the action of the Baden deputies was endorsed by

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majorities of 136 to 36 and of 48 to 30 votes respectively. The general Socialist Congress at Magdeburg, however, on September 21 censured the Baden Socialists by a vote of 228 to 64, after 70 delegates had left the hall. The congress applauded a declaration made by Herr Noske that "against the régime of personal absolutism Socialists place the demand for a republic." By-elections brought the number of Socialists in the Reichstag up to 51.—The bitterly assailed **Prussian** franchise bill (see last RECORD, p. 386), after having been carried through the upper house by 140 votes to 94, was withdrawn. In June, the minister of the interior, Herr von Moltke, who had prepared the unsuccessful measure, and the minister of agriculture, Herr von Arnim, resigned. They were succeeded respectively by Herr von Dallwitz, governor of Silesia, and by Baron von Schorlemer, governor of the Rhine province. A bill for adding $500,000 to the Prussian civil list passed the Landtag against the votes of the Socialists.

AUSTRIA-HUNGARY.—The keel of the first Austro-Hungarian Dreadnought was laid in June and that of the second in September. The finance minister, in a report on naval expenditure, placed the cost of Dreadnoughts already planned at $62,000,000, and stated that $4,000,000 would be required annually for the replacement of old ships. The arrest in May of Lieutenant Hofrichter on suspicion of having attempted to poison a number of general staff officers, caused a sensation; he was tried, found guilty, and condemned to twenty years' penal servitude.—The general election in **Hungary** (see last RECORD, p. 387) resulted in a remarkable victory for Count Khuen Hédervary's government, which secured 246 out of 413 seats. At the opening of the Hungarian Parliament in July, the premier urged the necessity for a common army and a common bank. The ministry found great difficulty in raising a loan of $115,000,000; having failed at Paris, it turned to the Rothschild group of bankers in Austria and in Germany.—The ban of **Croatia**, Baron Rauch, resigned in July, owing to the continued opposition of the Serbo-Croatian coalition in the local Diet. The emperor declined to accept the resignation.—Emperor Francis Joseph visited **Bosnia-Herzegovina** late in May and met with a cordial welcome. An unsuccessful attempt was made on June 15 to assassinate the governor as he was returning in Serajevo from opening the first Diet. The three parties in the Bosnian Diet united in adopting a resolution pointing out the limitations of the newly-granted constitution and explaining that it did not meet the expectations of the people.

ITALY.—Premier Luzzatti announced to the Chamber on April 28 the **program of the ministry.** He asked for further postponement of final action on the maritime conventions (see last RECORD, p. 388), fiscal reform, assistance to elementary education and an increased tax on tobacco. The government, while consenting to no persecution of the Church, would avoid all compromise with the Clericals. A vote of confidence in the ministry was carried on May 30 by 393 votes to 17.—On May 28 **Parliament** passed a government bill granting maritime subsidies, after the premier had de-

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clared that it was only a temporary measure. The Chamber passed the elementary education bill by a vote of 374 to 21, but the Senate, adjourning on July 12, postponed discussion of the measure until the reassembling of Parliament in November.—A demonstration at Bari on August 10, held to protest against an increase in house rents, developed into a riot.—The municipal elections in **Rome** in July resulted in the return of all the 22 candidates of the *Blocco Popolare*, the anti-clerical party. In a speech delivered by Mayor Nathan of Rome on September 20, the fortieth anniversary of the entry of Italian troops into the city, the tenets of the Catholic church were sharply criticised. The speech was denounced by the Catholic press and elicited a protest from the pope, in a letter to the cardinal vicar. —A monument to liberty, erected at Palermo in commemoration of the annexation of the **Two Sicilies** to the kingdom of Italy in 1860, was unveiled in June in the presence of the king and queen and of 100,000 representatives from various societies.

RUSSIA.—The principal business before the **Duma** has been the consideration of the report of the Russo-Finnish commission on the relations of the grand-duchy to the empire, recommending that the constitutional independence of Finland be reduced to provincial autonomy and that for imperial purposes the province of Finland send five representatives to the Duma and one to the Council of the Empire (see last RECORD, p. 389). The first reading of the bill was carried on June 8, the opposition having previously withdrawn from the Duma owing to the Nationalists' tactics in closing debate. M. Homiakoff and the Moderate section openly declared the proceedings to be a disgrace to Russia. The bill passed its second and third readings on June 10 amid the greatest confusion, the most debated clauses securing majorities averaging from 125 to 80. The Duma virtually concluded its labors in June. One of its final measures was to sanction a supplementary appropriation of $25,000,000 for special railway coaches for emigrants.—The **Council** of the Empire passed the Finnish bill late in June, and amended the Duma bill respecting the Old Believers so as to withdraw all the liberties provisionally accorded.—A special commission was appointed in August to investigate abuses in the admiralty. This was regarded as a victory for the Duma, which had refused to make grants for further naval construction until such an investigation should have been made.—M. Isvolsky was appointed in October ambassador to France, being succeeded in the ministry of foreign affairs by M. Sazonoff.—Cholera was prevalent during the summer in the southwestern provinces.—In **Finland**, M. Charpentier, procurator of the Senate, was dismissed because of persistent protests against the breaches of the constitution. The Diet assembled on September 15, and rejected both the imperial proposals for military expenditure in 1910–11 and the Finnish bill passed by the Duma. The Diet was dissolved on October 8 and fresh elections were ordered for January 2. The tsar directed that the proposals concerning the rights of the Russians in Finland and Finnish contributions for Russian military purposes should be presented for final action to the Duma.

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SPAIN.—Final **election returns** in May showed the following distribution of votes in the Cortes: Ministerialists, 227; Conservatives, 105; Republicans, 42; Carlists, 9; Catalonians, 7; Integrists, 2; Independent, 9; doubtful, 3. The Republicans regained three seats. The prediction that the **new ministry** of Señor Canalejas would prove anti-clerical was verified by a decree published in June, granting non-Catholic religious establishments the right to show signs of their belief on the walls of their churches and in their notices. The Holy See immediately protested against the decree as a violation of the Concordat.—King Alphonso opened the **Cortes** on June 15. His speech dealt in part with the relations between Spain and the papacy and announced measures for reducing the number of religious orders. Other proposals included obligatory military service, continuation of naval organization, a progressive system of taxation on inheritances and taxation of the property of corporations and societies.—The **clerical question** at once became acute. The entire Spanish hierarchy and the pope protested to the premier against the government's policy in regard to religious congregations. Señor Canalejas replied that he would not retreat from his position. Clerical and Carlist riots occurred at Bilbao late in June. At Madrid a large demonstration, in which Señor Moret y Prendergast and other prominent Liberals participated, was held on July 3 in support of the government's religious policy. The Vatican declared itself unable to continue negotiations relative to a proper modification of the Concordat until the government should postpone or withdraw the various edicts and measures dealing with the status of the church and the orders in Spain. The Spanish ambassador to the Holy See was recalled on August 1; the papal nuncio, however, remained in Madrid and continued negotiations for a revision of the Concordat. The government forbade Catholic demonstrations, which were to have been held at Bilbao and San Sebastian, partly because of labor troubles in those towns. Large Catholic meetings were finally held in most of the cities on October 2; in Madrid, on October 16.—The clerical situation was complicated by serious **labor** disputes. A strike involving 15,000 men began at Bilbao on July 16. After considerable indecision the labor federations at Bilbao and Saragossa declared a general strike. There was much disorder, and the civil government proclaimed martial law and suspended the constitutional guarantees. The strike was finally settled in September.—An attempt was made at Barcelona on July 22 to assassinate Señor Maura, the former Conservative premier. He was wounded, though not seriously, by a youth eighteen years of age.

PORTUGAL.—The various Monarchist groups found great difficulty in coping with the political situation. The **cabinet** resigned in June, and Senhor Teixeira de Souza formed a new one, with marked anti-clerical leanings. The Cortes was dissolved. On July 12 a decree was published censuring the archbishop of Braga for suppressing a religious periodical at the papal command without the government's concurrence. A few days

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later the director of the Republican Journal *Mundo* was condemned to a fine and five months' imprisonment for contravening the press law in references to the king.—The **elections** on August 28 passed without grave incidents. The government obtained a slight majority, but Lisbon returned ten Republicans, and Dr. Affonso Costa, their leader, declared openly that the king must go. Towards the middle of September the police discovered several bombs in the house of a Republican. On the seventeenth, the king signed a general amnesty in favor of the Republican journalists.—King Manuel opened the **Cortes** on September 23 with a speech promising radical and anti-clerical measures, but the opposition *bloc* absented itself, and several days later the Chambers were adjourned by the Royal Council until December.—A **revolution** broke out at Lisbon on the evening of October 3. The Portuguese fleet and some of the troops, acting in concert and supported by a large number of armed citizens, demanded a republic. Telegraph and railway communication was cut, and Lisbon was isolated. Street fighting occurred, the fleet bombarding the royal palace, causing about a hundred deaths and some loss of property. After thirty hours of continued fighting, more troops went over to the insurgents and a republic was definitely proclaimed. King Manuel, together with his mother, Queen Amalia, and his grandmother, Queen Maria Pia, fled to Gibraltar and thence proceeded to England. The king declared that his flight was not to be interpreted as an abdication.—Meanwhile, the Republicans had installed a **provisional government** under the presidency of Senhor Theophile Braga, the well-known savant, poet and authority on Portuguese folk-lore. The ministry included Affonso Costa as premier and minister of justice; Bernardino Machado, foreign affairs; and Bazilio Telles, finance. The republic was proclaimed on October 6 at Oporto, Coimbra, Braza and Estremoz, and shortly afterwards in the colonies. The new government maintained fairly good order. What rioting there was appears to have been directed against the religious orders. One of the republic's first acts was to order the enforcement of the laws of 1759, 1767 and 1834 against the Jesuits and the abrogation of the decree of 1901 giving tolerance to the orders. Expulsion of monks and nuns and confiscation of their property began on October 8. Cardinal Netto, former patriarch of Lisbon, was expelled from the country as a member of the Franciscan order.

THE BALKAN STATES.—In **Turkey**, the Chamber was prorogued on June 28. The army succeeded during May and June in suppressing a reactionary insurrection among the Albanians. In August the government sent a punitive expedition among the Druses, who had destroyed two Christian villages in the Hauran. Two German warships were bought in August for $5,000,000. Hussein Husni Effendi resigned in June as sheikh-ul-islam, and was succeeded by Senator Mussa Kaizim Effendi. The government's refusal to permit the convocation of an assembly of the Greek church called forth angry protests from the patriarch of Constantinople.—In **Greece**, elections for the National Constituent Assembly (see last RECORD,

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p. 390) took place on October 21 in perfect order. M. Venezelos headed the poll in Athens by a large majority; M. Rallis, an ex-premier, was also elected. The Assembly met in September, and, after a stormy six weeks' session, was dissolved. Its failure seems to have been due to financial difficulties and to the lack of concerted action among the many small political groups. M. Dragoumis submitted the resignation of his cabinet to King George on October 12. M. Venezelos then formed a new ministry, with M. Gryparis in charge of foreign affairs and M. Coromilas of finance. Elections for a new Assembly were decreed for December, and it was believed that M. Venezelos's great popularity would secure him a decisive majority.—Prince Nicholas of **Montenegro** assumed the title of king on August 14.—The **Bulgarian** cabinet of M. Malinoff was reconstructed in September, partly because of the failure of its policy in the Macedonian question and partly on account of charges of bribery and corruption in the ministry of the interior.

OTHER EUROPEAN STATES.—A bill passed the **Norwegian** Storthing and received the assent of the king in June, extending woman suffrage to all communal elections. M. Arctander, minister of commerce, who advised the king not to sign the bill, resigned. The Storthing in July passed a government measure granting a sum of $1,000,000 for special defence purposes.—The ex-premier of **Denmark**, M. Christensen, was acquitted in June of the charge of implication in the Alberti scandals, the court, however, expressing strong disapproval of his conduct while in office. M. Berg, a leading politician and former minister, was sentenced to fines amounting to $1000 for not having investigated M. Alberti's affairs when suspicion was aroused. A new ministry was formed in July with M. Klaus Berntsen as premier.—The States-General of the **Netherlands** were opened by the queen on September 20. The expenditure for the year was estimated at $85,000,000; the deficit was to be met by tariff revision and the imposition of a general income tax. The legislative program also included workingmen's insurance, revision of the copyright laws, reorganization of the government of the Dutch East Indies and a new education bill. A three weeks' lockout, affecting 10,000 workers in almost all the cotton mills of the country, was compromised late in August.—The **Belgian** elections in July showed a majority for the Clericals, who have now been in power for twenty-six years. A disastrous fire at the Brussels Exhibition on August 14 destroyed the whole of the British and parts of the French and Belgian sections.—A new railway was constructed in **Switzerland** between Disentis and Brigue.—The prince of **Monaco** granted a constitution to his people in October.

VI. AFRICA AND ASIA

MOROCCO.—Mulai Kebir, the sultan's brother, was proclaimed sultan at Tesa early in May. At first the tribes near Fez rallied to his cause, and gave signs of a serious revolt; but the movement gradually collapsed,

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until, in September, Mulai Kebir submitted and was restored to his estates at Fez.—The jurisdiction of **Raisuli** was greatly enlarged in June through his appointment to the governorship of Alcazar and the surrounding districts.—Plans were progressing for the construction of the port of Tangier.

EGYPT.—The **ministry** in June overruled the action of the Legislative Council by adopting in their original form the rigorous measures dealing with press offences and with secret societies and by rejecting the amendments proposed to the School Discipline Bill.—Wardani, a native leader and assassin of Boutros Pasha, was hanged on June 28. Elaborate military precautions were taken against disorder.—After a four days' trial at Cairo on the charge of publishing a book of seditious poems, El Ghaysti was sentenced in August to a year's imprisonment. Several others were similarly punished.—The permanent committee of the **Young Egyptian party** held its congress at Geneva, Switzerland, in September, under the presidency of Mohammed Fahmy. Attacks were made on the British occupation, and on Mr. Roosevelt for his speeches at Khartum and in London.

ABYSSINIA.—The report of the death of King Menelik (see last RECORD, p. 391) proved unfounded.

LIBERIA.—Financial regeneration proceeded under American auspices. Bankers in New York, London, Paris and Berlin were asked in June to contribute by private agreement a sum sufficient to refund the Liberian debt, the security offered being the appointment of an American financial supervisor, and of a board, presumably of mixed nationality, to administer the customs.

PERSIA.—On April 30, the sipahdar announced to the Mejliss that his **cabinet** would remain in office, the only change being that Sardar Assad would become minister of war, while he himself would be minister of the interior as well as premier. The cabinet failed to secure a German loan or the withdrawal of the Russian troops from northern Persia, and found itself unable to maintain order: on the one hand, the Kurds surrounded Kermanshah; on the other, Darab Wirza, an ex-officer in the Russian service, raised a standard of revolt at Zinjan in the province of Khamseh and declared for the deposed shah.—In July the sipahdar and Sardar Assad, with the other members of the cabinet, resigned; and Mustaufi Mamalik formed a new ministry. The new premier submitted his **program** to the Mejliss: the employment of foreign advisers to undertake the reform of the police; improved administration in the provinces; punishment of disorderly elements; increase of provincial garrisons to 30,000; a foreign loan; and reform of courts and schools. The new government displayed a good deal of energy in putting down the revolts. In August it invited Italians and Swiss to fill posts in the *gendarmerie*, Frenchmen to serve in the department of finance, and Egyptians in the courts.—Syed Abdullah, a clerical leader at Teheran, was murdered on July 15; and, apparently by way of reprisal, Ali Mahomed Klan, a prominent Nationalist and a nephew of the deputy

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for Tabriz, was assassinated on August 1.—The Mejliss in September elected as regent Nasr-el-Mulk, by 40 votes to 29 cast for Mustaufi-ul-Mamalik, the premier. Nasr-el-Mulk returned to Persia in October and accepted the regency.

CHINA.—An **imperial edict** issued in May established a standard currency dollar and a coinage of pieces of smaller value on the decimal system. Another decree in June made English the official language for scientific and technical education. The throne refused to grant a petition, presented in June by the representatives from the provinces and Chinese communities oversea, asking for an immediate constitution, on the ground that it was impossible to shorten the period of nine years as fixed by Emperor Kwang-Su and that the people were not yet ripe for full constitutional rights.—An unexpected edict issued at Peking on August 17 pointed to the restoration of the reform party to power. Tang-shao-yi, a leading reformer, was appointed president of the ministry of communications, and Sheng-kung-pao was again attached to the ministry of finance to assist in the currency reforms.—In accordance with the original scheme of reforms, outlined in the edict of September, 1907, the **National Assembly** met for the first time on October 3. It contained the elements of a bicameral parliament: representatives of certain privileged classes and delegates from the provincial assemblies. Subjects for its discussion were: national income and expenditure and the preparation of a budget; methods of taxation and public debts; new codes, which must, however, be approved by the emperor before being submitted and any other question which should be presented direct from the throne.—An exhibition was opened at Nanking on June 5.—The opium market was greatly disturbed by action taken by the Chinese government, holding dealers in raw opium responsible for the collection of the new duties.

JAPAN.—**Korea** was formally annexed to Japan on July 29, following the signing of the treaty between the emperors (see *supra*, p. 730). The new province bears the ancient name of the kingdom, "Chosen." An imperial proclamation abolished the jurisdiction of consular courts and continued the existing Korean tariff for a period of ten years. Regulations for the government of Chosen were gazetted on September 30; under the Japanese resident-general, thirteen prefectural governors were appointed, seven Japanese and six Koreans.—Seven men and a woman were arrested on May 28 at Tokio on a charge of manufacturing bombs for **anarchistic** purposes.—**Floods** caused widespread disaster throughout Japan in August. In Tokio alone, 200,000 persons received government relief. The losses were estimated at thirty million dollars.

[For colonies and dependencies in Africa and Asia, see the United States, the British Empire and the continental European states, *supra.*]

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